

In Case

John Penn, Thomas Penn, and Richard Penn, Esqrs.

Plaintiffs.

Charles Calvert Esq; Lord Baltimore in the Kingdom of Ireland,

Defendant.

The Plaintiffs Case.

A Verbal Description
of the Map.

Map.

The Peninsula.

Its Boundaries,

On both sides.

Three different Boundaries,
on the East-
side.Part of the Lower
Counties are on the
East side of it.Part of Maryland
is on the West Side of
it.

As to the Isthmus.

As to the Degree of
Northern Latitude.

About the Degrees.

Where Delaware
Bay Ends.Where Delaware
Bay begins.

Old Cape Henlopen.

THE only difficult Task therein is to speak the Map, or to describe, in Words, clearly and distinctly, the Peninsula, often mentioned in the Pleadings; in which Peninsula some Part of the three Lower Counties of *Newcastle, Kent and Sussex*, and also one of the two Parts whereof the Province of *Maryland* consists, do lie. When once the Situation, the Boundaries, the Extent, the Isthmus, and some few particular Places about that Peninsula, are clearly described and comprehended, the Cause will, then, fall into a Method, which may be readily understood by any Person.

To proceed therefore, In *America* there is an exceeding long Peninsula, or narrow Neck of Land, which thrusts it self out from the Main Continent, lying on the North Part, into the Atlantick or Western Ocean, on the South Part;

This Peninsula is at least 150 Miles long, from the North to the South.

To stand (suppose, in the Sea) at the South End of that Peninsula, and to look from thence up the Peninsula, to the North (which is the way that we look at it, in any Map) the Southern Point or End of this Peninsula is in the main Western Ocean; the Western Side of it has but one single Boundary only, quite up to the Head of the Peninsula, that is, the Bay of *Chesapeake*; but, the Eastern Side of it, (where our Disputes lie) has three several different Boundaries, in the several Parts of it, as you proceed along the Peninsula Northwards, viz.

1. The Great Western Ocean.
2. The Estuary of *Delaware* (translated *Bay* in the Defendant's own Charter for *Maryland*—)
3. The River of *Delaware*.

Into the Head of *Chesapeake* Bay runs *Susquehanna* River; into the Head of *Delaware* Bay runs *Delaware* River.

Along, upon the Eastern Side of this Peninsula, and also above, or more North than this Peninsula, lie the three Lower Counties, now called *Newcastle, Kent and Sussex*, (called the *Lower* Counties to contradistinguish them from the Province of *Pennsylvania*, which being also in Mr. Penn's Hands, and laying more North, were heretofore vulgarly called the *Upper* Counties.)

On the Western Side of this Peninsula, lies Part of one of the two Tracts of Land whereof the Province of *Maryland* consists.

More Southwards, (or lower down) than the Foot, or Southernmost Part, of the three Lower Counties, *Maryland* does, there, extend across the whole Peninsula, from one side thereof to the other, quite from *Chesapeake* Bay, on the West Part, to the main Ocean, on the East Part, for there it was *inculca* at his Grant.

As this long Neck of Land is called, by the Crown, by the Parties, and by all Historians and Geographers who ever writ of it, a Peninsula, it's next to be considered where the Isthmus is that finishes or concludes this Peninsula?

In order to consider what may properly form the Isthmus of this Peninsula, there are (as we think) but three things that can, regularly, form it.

1. The Place where the Tide and Flowing Waters on each side approach the nearest to each other. And that Place is markt, in the general Map, by a Line from *M*, to *N*, being, from the flowing Water in *Bohemian* River, to the flowing Water in *Apoquinimick* Creek, and there the flowing Waters are distant but about 4 or 5 Miles, asunder.
2. The Place where the very Bodies themselves of the Bay of *Chesapeake* and great River of *Delaware*, meet the nearest to each other; and that Place is a little more North than the first, being markt in the general Map, by a Line from *O* to *P*, and there, the Great Waters are distant about 22 Miles, asunder.
3. The natural Shape of the Land, so invironed with Waters; and which falls in, exactly, with the Place last mentioned.

For it is in Proof that the great Waters, on both sides of this Peninsula, (both above and below) do greatly diverge from each other, and no where approach so near to each other, as they do at this Place.

But it's the Defendant's Interest to carry this Peninsula, and the Isthmus of it, as high, or as far North as possible, and he has got one single Witnes, only, from whom we are told

4. That there is (some where or other) a Place, in the Land, where two Spring-Heads rise, or break out, within about a quarter of a Mile of each other, which run, one of them, down to *Chesapeake* Bay, or to some River that runs down to it, and the other, towards *Delaware* River or Bay; and so he would infer, that as (some) Waters do there meet, much nearer than at any of the Places we have mentioned, that, therefore, must be the true Isthmus.

But, he does not tell us what sort of a Rill or Run of Water proceeds from either of these Spring-Heads; whether so large as a Straw, or not;

He by no means tells us whereabouts these same Spring-Heads are.

And, in the Nature of the thing, a Peninsula, as this is, which, in every other Part of it, is wholly surrounded by the vast Atlantic Ocean, and by the great Bays of *Chesapeake* and *Delaware*, (such prodigious Waters as those) can never have its Isthmus formed by a Matter so extremely minute and disproportionate as a small Rill or Run, at the first Rising or breaking out of a Spring-Head.

And, if it could, we need not go so far North, to find such an Isthmus, so formed as that; because, if that would properly make the Isthmus, we have many Places, down more South, in the very Body of the Peninsula, where Spring-Heads rise yet nearer to each other, and run both ways; we have single, individual, large Ponds, or Lakes, from which one and the same common Source the Waters flow both ways, and consequently, according to such a Construction, would make the Peninsula a compleat Island; and we have other Places where the Spring-Heads, which run into one, and into the other side, do more than meet together, for that they lap over each other, or interlock, as it is called.

The next thing material is, to fix the Latitude of any Part that we can, of or about this Peninsula; I mean, the Latitude, as known at the Time when this Peninsula was first discovered and described.

Now we, at present only say (and it shall be abundantly proved by and by) that the Bay of *Chesapeake*, and the Western side of this Peninsula, were discovered by Captain *John Smith*, an *Englishman*, in 1606, and that he publish'd at *Oxford*, and in *London*, three different Editions of his Discovery, and three Editions of his Map thereof, so very early as in the Years 1612, 1624, and 1625, which Dates will be very material hereafter.

In all those early Maps, and according to the Knowledge of those early times, (which must be the Rule for explaining any Transactions of those Times) the Line of the 40th Degree (compleat) was laid down to be about 7 Miles more North than the Head of *Chesapeake* Bay.

In other ancient-Maps, printed since that Time, that Line of the 40th Degree (compleat) is found to lay more North, still.

And now, in new modern Maps, it's carried still much further North, even than it was before,

Having mention'd the Line of the 40th Degree compleat, it behoves us to lay down our first Principles as plain and precise as possib'e, and it will yield us great Clearness and Perspicuity in our Arguments afterwards to do so.

Therefore, the Degrees of Northern Latitude are contained between imaginary Lines in the Heavens.

They begin from the Equator.

And, when measuring the Earth, to measure 60 Geometrical Minutes, or 69 English Miles and $\frac{1}{2}$ North from the Equator, all that whole Space is in, within, or under, the first Degree of Northern Latitude.

Then, the Line of that first Degree is the Mark where the first Degree is fully compleat and ends, and, there, the second Degree instantly begins.

The Line where any one Degree is quite compleat and ends, and where the next begins, is an indivisible, imaginary Line, without any sort of Space or Width, whatever, in it.

But, a whole Degree, itself, even here, upon the small Globe of the Earth, has great Width and Space in it, and is very capable of being divided, and is constantly divided into Sixty Minutes or Geometrical Miles, and again, subdivided, into Seconds, Thirds, and so on.

So that the Line of the 40th Degree is the Place where the whole Space of the 40th Degree is finished and concluded, and is quite compleat, and where, at that Instant, the 41st Degree begins.

We have no clear Account of the Latitude of any other certain Place, (as it was known or esteemed in those very early Times) save only of the Head of *Chesapeake* Bay, which we find by *Smith's* Map, was then understood to be 7 Miles short of the Line of the 40th Degree compleat.

Which will be sufficient for us to establish; and will be exceedingly material for us.

For if we have, by the Agreement, which we now pray a specifick Performance of, conveyed to the Defendant Lands, a great deal more North and above that Old Line of 40, we are at every rate Purchasers from him, and at such a valuable Consideration, as intitles us to the Aid of Equity, and the said Agreement can not be called (in any legal Propriety) a meer voluntary Agreement, or without Consideration.

We have before said, that the Estuary, or Bay, of *Delaware*, makes but One of the Three several Eastern Boundaries of this Peninsula; but where does that Bay end, and where does it begin?

Those shall be the next Questions to be considered.

Delaware Bay (which lies on the East-side of the Peninsula) ends, according to one of our Witneses, a Landman, at the Bite, between *Red Lyon* and *Apoquinomi* Creeks, about ten Miles South of, or below, the Town of *Newcastle*,—and indeed, by the Map, it would appear so; and above that Bite, then, the River *Delaware*, at the Head of *Delaware* Bay, begins, (for its part) to diverge, and run to the Eastward, as the other River *Susquehanna*, at the Head of *Chesapeake* Bay, also, runs away and diverges, as quick, and as strongly, for its Part, to the Westwards.

But, as a Sea-Bay falls, more immediately, under the Consideration of Navigators, the Witneses of that sort, on both sides, agree that the Bay of *Delaware* ends about 30 Miles South of the Town of *Newcastle*, at a Place called *Bombkeys Hook*; and that the Water, North of, or above that Place, is not the Bay of *Delaware*, but the River of *Delaware*.

The Bay of *Delaware* begins still much further Southward, at the two Capes, which form the Mouth or Entrance into it.

The very old, early Map of 1606, (published and republished in 1612, 1624 and 1625) was not so exact as to give us any Names, whatever, for the two Capes which formed the Mouth of *Delaware* Bay. Nor, indeed, does it clearly distinguish the whole Eastern Side of the Peninsula, for Captain *Smith* went up the Bay of *Chesapeake* on the Western Side of the Peninsula.

But, the second Sett of ancient Maps, both foreign and English, which were made upon further Discoveries, (by which, I mean, such as were made after *Smith's* Map in 1606, and yet precedent to the Year 1680) do give us the Names, then known, for the two Capes that formed the Mouth or Entrance of the Bay of *Delaware*.

And they were, then, long before 1680,

Cape *Cornelius*, and Cape *May*.

The Witneses who speak of this matter from Tradition, from old Persons, and from ancient Histories, also add, that *Cornelius May*, a Dutch Skipper, in the Year went up this Bay of *Delaware*, (just as, several Years before, Captain *Smith* had gone up the Bay of *Chesapeake*) and gave his own Christian and Surname to the two Capes that formed the Mouth or Entrance into *Delaware* Bay, viz, *Cornelius* and *May*; Cape *Cornelius*, Cape *May*.

It is most certainly true, that the Western of the two Capes, (being that which lies on the Eastern Part of the Peninsula) does now, at this time, bear a new Name, very different from Cape *Cornelius*; from whence the Defendant takes an Opportunity of raising a Piece of Chicanery.

And the Reason of the altering the Name of that Cape, from what it was, to what it is, called, will by and by most clearly appear.

We are now got down, Southwards, to the Mouth or Entrance of the Bay of *Delaware*.

We must yet go lower.

When we go down more South than the Cape which helps to form the Mouth, Entrance, or Beginning, of the Bay of *Delaware*, (by whatever Name such Cape was, or is, called) then, the Peninsula bounds, Eastwards, upon the Western or Atlantic Sea and Ocean.

There is another Place, extremely material to be observed, upon the Eastern Side of the Peninsula, and to the Ocean; which is another Cape, anciently called Cape *Henlopen*, and which we insist on as the ancient South Bound of the Three Lower Counties, whilst in Possession of the Dutch, the Duke of York, and Mr. Penn, successively.

John Paul, Thomas Paul, and Richard Paul, Agents

Charles Carter, Esq. Lord Baltimore in the Kingdom of Wales

Esq. Baltimore



The Situation, Name, and Circumstances attending that Cape.

Cape *Henlopen* lay, on the East Side of the Peninsula, about 23 or 24 Miles to the South of Cape *Cornelius*, upon a Sea Warmet, at a Place called *Phœnix* or *Fenwick's Island*. The Name of that Cape *Henlopen* is a Dutch Word.

The Translation of it is, Cape Run-away, or Cape Vanishing, or Cape Disappearing. And it was a significant Name, and carried Sense and Meaning in it.

For, tho' the Land was higher there, and there were likewise, upon *Fenwick's Island*, very great high Trees, both which contributed to make the Land there look bold, like a Cape, or Promontory, or Head Land, when out at Sea; yet, when Sailors, upon the Faith of that Appearance, stood in to it, it answered its Name, it proved deceitful, it run away, it vanished, it disappeared, as they approacht it nearer and nearer, and in fine, was found to be a false Cape, and not the true and real Cape that formed the Mouth of *Delaware Bay*; and consequently, they found they were not (as at first Sight they were led to hope and expect they were) then, within the Mouth or Entrance of *Delaware Bay*, but indeed, far without it, and South of that Mouth or Entrance.

However, it was still called a Cape, and still printed as a Cape, by the Name of Cape *Henlopen*, in Dutch, in English, and in other foreign, ancient, printed Maps; not indeed of the very oldest Date, such as that made in 1606, (because, so early as that, they had not precisely the Capes in them) but, in such ancient Maps as were printed long before the Year 1680.

The whole Country thereabouts called so. The Reason of transferring that Name up to another Place.

And not only so, but the Inland Country, all thereabouts, was called *Hinlopen*, after the Name of that Cape.

But, in Process of Time, that Cape, which at first appeared as the Cape at the Entrance of the Bay, and which, at first appearance, was taken for the Cape that formed the Western Part of the Mouth or Entrance into the Bay of *Delaware*, being found, constantly, to run away, vanish, and disappear, according to the Meaning of its Name, and to be a deceitful and false Cape to Sailors, and that, in truth, it did not make, or form, One of the two Capes to the Entrance into *Delaware Bay*, it came to be called, by Sailors, as it really was, the false Cape.

And, again, in further Length of Time, the very Name of that, which indeed was not the true Cape, viz. Cape *Hinlopen* (or something like that Name, viz. Cape *Inlopen*) was, by Sailors, transferred, up to that Place where there truly and really was a Cape, or Entrance, into *Delaware Bay*, namely, to Cape *Cornelius*. And now, at this day, Cape *Cornelius* is not, generally, called so, unless by People who knew it a long while ago under that Name; but that Place is (now) by several People, of late Date, called Cape *Inlopen*.

The Pretence of Deceit thereby made by the Defendant.

From this trifling Incident, which the Defendant thought we should never be able to clear up (but wherein he has found himself abundantly mistaken) he has raised a most mighty pother, that tho' his own Map laid down both those Capes, and very truly too, Cape *Cornelius* more North, Cape *Hinlopen* more South; and tho' the Agreement, which he himself proposed, solicited, dictated, and forced us into, was, that we should carry the South Bounds of the Lower Counties, down to Cape *Hinlopen*, South of Cape *Cornelius*, and towards the Main Ocean: (For, by that treble Description it is expressed) yet, forsooth, that we deceived and imposed upon his great Ignorance of his own Country, for that (as he says) the Place, anciently and originally called by the Dutch Cape *Hinlopen*, and so printed, and by that very Name, in all their Maps, really and truly was up at Cape *Cornelius*!

But not supported.

But, has he supported this Pretence? Has he attempted to prove it? Has he proved any one single Map, Dutch or other, that called it so (anciently I mean, for that is the very Point in issue, and I well know that the new modern Maps do, now, call it so, for the Reasons above-mentioned?) Nothing like it.

But on the contrary clearly disproved.

On the contrary, we prove, by a Number of written Records, by many old Witnesses, and by all the Old Dutch and English Maps, printed before the Year 1680, (and consequently before Mr. Penn had any manner of concern in America) that there were then two several Capes, Cape *Cornelius* and Cape *Hinlopen*; and that Cape *Hinlopen* was always laid down in them South of Cape *Cornelius*.

Please to remember well, that this Old Cape *Hinlopen* did not lie within *Delaware Bay*, but down South of, or below, that whole Bay, and in or to the Main Sea.

Another thing to be noted in the Proofs is, that, whenever any Act or Instrument, or any Witness, relating to the Lower Counties, speaks of the Sea, or Lands bordering on the Sea, in the Lower Counties, That, of absolute Necessity, disproves my Lord's Pretence, and shews that the Dutch, the Duke of York, and Mr. Penn, always held Lands in the Lower Counties lower than the Place which we call Cape *Cornelius*, and which he calls the New Cape *Inlopen*; because, if the true Cape *Hinlopen* was anciently and really at Cape *Cornelius*, at the Mouth of the Bay, The Possessor of the Lower Counties (so bounded on the South Part) could not have had an Inch of Lands to the Sea, but only by the River and by the Bay of *Delaware*.

New Netherlands, now New York.

There is but one thing more, relating to the Peninsula, to be mentioned, and removed out of the way, and that is, that the very Southern Extremity or End of it, is neither any Part of the Lower Counties, nor yet of Maryland, but is a Part of his Majesty's Province of Virginia.

Having said thus much, relating to the Peninsula itself, it may be necessary to state only 2 or 3 other Matters, very shortly, relating to the Situation of other Places.

There was, anciently, a certain Territory called *New Netherlands*.

That Territory is now called *New York*, and is divided into two Provinces, *New York* and *New Jersey*.

New Netherlands (now *New York* and *New Jersey*) lay to the Eastward of the Peninsula, and to the Eastward of the Bay and River of *Delaware*.

And the Dutch were, once, possessors of *New Netherlands*.

Points.

Now, I will lay down some Points, which shall be most clearly proved, with respect to the first Part of the Case, and the Extent of Lord Baltimore's Charter.

1. That the Dutch (antecedent to the Grant to Lord Baltimore in 1632) were possessors of their great Settlement at *New Netherlands*, and, of a small Settlement also, on the Western Side of *Delaware River* and Bay, in the Parts now called *Pennsylvania*, and the three lower Counties: Which smaller Settlement was subject to, held under, governed by, dependant upon, and every way appurtenant to, their great Settlement.

2. That Lord Baltimore's Grant in 1632, was framed and made, by Capt. Smith's Map, and by no other.

3. That the Crown did not grant, could not grant, did not intend to grant, to Lord Baltimore, any Part whatever of the whole Space of the 40th Degree (from the 39th compleat to the 40th compleat) even as that Degree was then known; but intended he should be bounded Northward by the Line of the 39th Degree compleat, as known at that time, or, in other Words, by the Beginning of the 40th Degree.

4. That his Ancestor did not ask for, nor the Grant include, any Lands but what were then possessors of Savages; Ergo, Not any Part of the three lower Counties, which were then possessors and held by the Dutch (and by the Swedish Nation also), in what Degree soever they did then, or do now, lie.

1584.
1606.

Queen Elizabeth granted Letters Patent to Sir Walter Raleigh, for the discovering new Lands and Countries, not actually possessors by any Christians.

Captain Smith (as he tells us in his History) went up *Chesapeake Bay*, and ashore in several Parts of it, and gave many Names to Places there. And (amongst others) Names to every Place (or to all but one) that is afterwards mentioned in Lord Baltimore's Charter.

1606. Apr. 10.
4 Jac. 1^{mi}.

King James granted one single Charter, to two separate Colonies, for Lands in America, between 34 and 45 Degrees of North Latitude. One of the Colonies to be the Virginia Company, and to consist of Merchants of London; the other, to consist of the Merchants of Plymouth.

1609. May 23.
7 Jac. 1^{mi}.

The said King made a further Grant of some Part of those Lands unto the first Colony, being the Virginia Company of Adventurers of London.

Smith's Map. 1612.
1620. Nov 3.
18 Jac. 1^{mi}.

The first Quarto Edition of Captain Smith's Book, and Map, of the Peninsula, was printed, at Oxford, containing the Line of the 40th Degree compleat, at the Distance of 7 Miles above the Head of *Chesapeake Bay*.

The King, by Letters Patent, grants to the second Colony in Fee, (being called the Council of Plymouth) all the Lands in *New England*, in America, from 40 to 48 Degrees, inclusively, and from Sea to Sea.

Ergo, While that Grant subsisted (which it did till long after 1632.) The Crown, if it had been possessors, and had been asked, and had intended to grant, could not grant any Part of the 40th Degree, which was already granted out to the Council of Plymouth.

Smith's Map. 1624.
1625.

Another Folio Edition of Captain Smith's Book and Map, was printed, in London, the same in Substance as the Oxford Quarto Edition of 1612.

Another great Work, being 5 Volumes in Folio, was published, in London, being called *Purchas's Pilgrims*, wherein Smith's History and Map, were, again, reprinted, as Part of that great Work.

Note, Each one of these Editions of Smith shew where the 40th Degree compleat, then lay, as aforesaid. — Shew that there was a Peninsula — And give the Names of — the Bay of *Chesapeake* — *Watkins Point* — *River of Wighco* — the *River Potowomeck* — the Place called *Cinquack* — and Cape *Charles*.

Note, The Dutch called *Delaware* the South River, in contradistinction to *Hudson's River*, which was, also, in their Possession, and which they called the North River.

1630. July 15.

We have a proved Copy of a Dutch Record from the King's Secretary's Office in *New York* (where the Original remains) which shews these things, viz.

1. That the Dutch had, then, a Director and Council at *New Netherlands*, at a Place called *Manhatans* (now the City of *New York*).

2. That several Indians came, and appeared, before that Director and Council, from the South Corner of the Bay of the South River, and acknowledged a Sale of Lands, which they had made on 11th June 1629, unto Mr. Samuel Godyn.

3. That those Lands, which those Indians sold, lay, on the South Side of the said Bay, by the Dutch called the Bay of the South River and stretcht in Length from Cape *Henloope* to the Mouth of the said South River, about 8 large Miles (8 Leagues).

Please to mark it very well. Lord Baltimore's Pretence is, that the Place the Dutch called Cape *Hinlopen* did not lay below, or more South, than the Mouth of the said Bay, but at the very Mouth of the Bay itself.

But what say the Indian Owners, and the Dutch, so early as in 1630? Why, that Cape *Hinloope* was 8 great Miles from the Mouth.

1632. June 20.
8 Car. 1^{mi}.

By Charter, reciting expressly Lord Baltimore's Petition to have a Grant of Lands *hæcenus inculta*, and inhabited by Savages having no Knowledge of Almighty God, The King, therefore, granted him his said Request, and granted him two Tracts.

1. All that Part of a Peninsula between the Ocean on the East Part, and the Bay of *Chesapeake* on the West, divided from the rest of the same [Peninsula] by a Line from *Watkins Point*, near the River *Wighco*, to the great Ocean; and, between that Bound, on the South, *usque ad* that Part of *Delaware Bay* on the North which lay under the 40th Degree of Northerly Latitude, from the Equinoctial, where *New England* ended.

2. And another Tract, (between the above-mentioned Bounds) on the Westward Side of the Bay of *Chesapeake*, not material in the present Question.

3. The Charter contains a Grant of all Islands and Islets to the Eastward of the Eastern Shore towards the Sea, within ten Leagues from the said Eastern Shore.

And the King erected those Lands into a Province, by the Name of Maryland.

Now, we say by our Bill, and prove, that no English Map was extant in 1632, but Smith's Map only.

We have also charged, and proved, that no Map, English or Foreign (then extant) has the Names of the Places, such as are contained in the Grant of Maryland, but Smith's Map only.

Ergo, That Grant was described from Smith's Map.

The first Description in the Charter of Maryland is, most explicitly, a Part of a Peninsula, bounded Westward by the Bay of *Chesapeake*; Can that extend many Miles up into the Main Continent, (to the new discovered 40th Degree compleat)?

The second Description of the Tract granted to him is, that it was bounded, on the East, by the Ocean. But he desires that we would, additionally, read Bay and River of *Delaware*, otherwise, he can't go up to the top of the Peninsula itself, much less a great way up into the Main Continent, as he desires to do.

The third Description takes it, from its South Bounds, and says it shall extend *usque ad* that Part of *Delaware Bay* which lay under the 40th Degree. — This he desires us to read thus, unto such Part as shall, by any new Discovery, 100 Years hence, be discovered to be the 40th Degree compleat then. Whether *Delaware Bay* does, or does not, extend thither.

Now, his own Witness tells us, that our Cape *Cornelius*, which is the Mouth and very Beginning of *Delaware Bay*, lies in 39 Degrees, 5 Minutes: Does it so? Why then, that very Beginning of *Delaware Bay*, was a Part which, of Necessity, lays under the 40th Degree, and, being the nearest Part to his South Bounds, is the Part to which he was (according to his Bounds) to go. [*Hæcenus inculta* will, still, exclude some more Lands, (even below that) but we speak, now, singly upon the Bounds of his Charter.] And it is to be well remembered, that we have proved that every Part of the Bay, whatever, even the highest Part thereof, ends about 30 Miles below *Newcastle*, at the Place called *Bombay's Hook*.

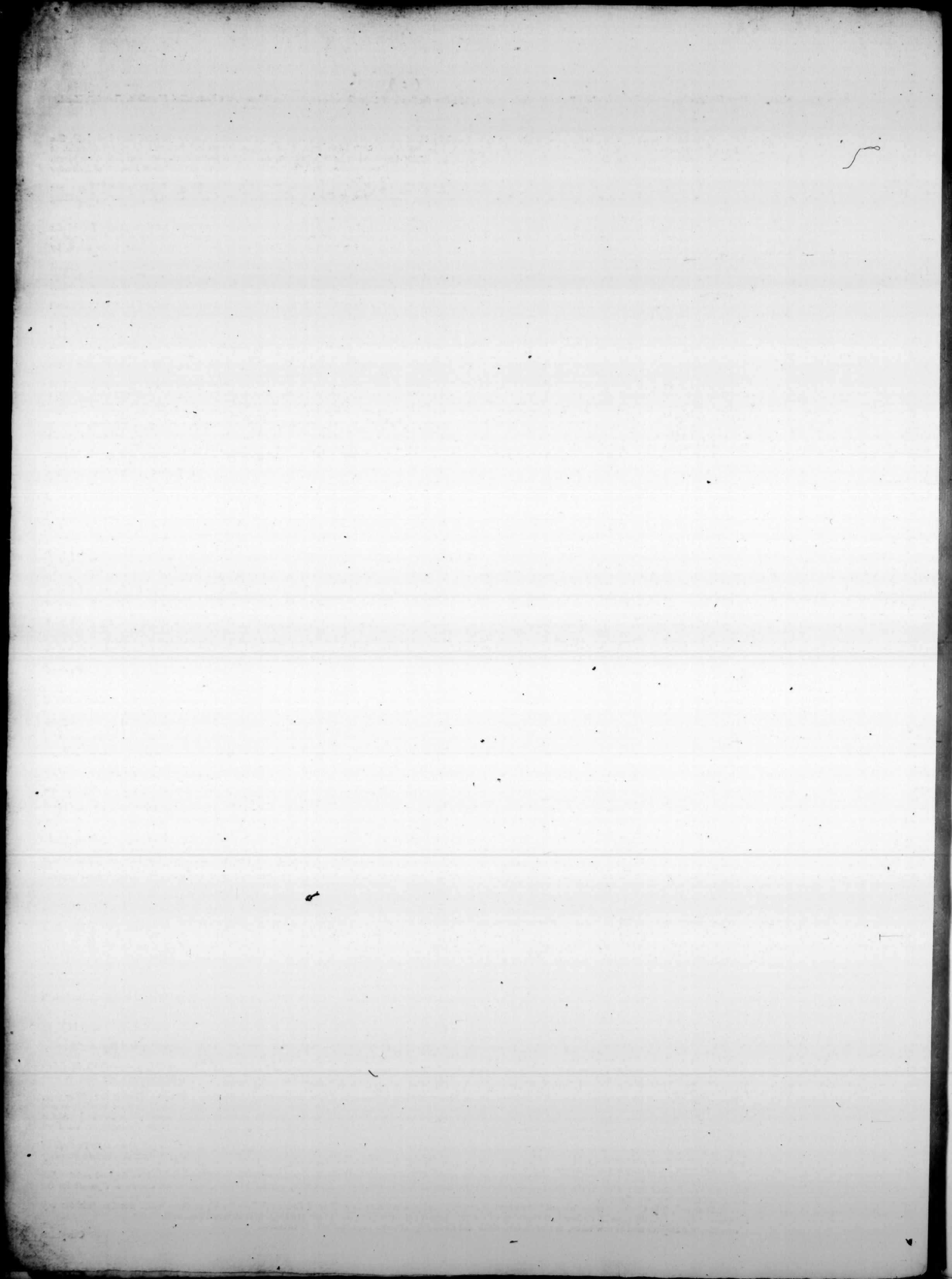
Again, if the Dutch were possessors of Lands on the East Side of the Peninsula, and those Lands extended down to our old Cape *Henloope* (as we have just shewn their Purchase of the Lands, quite thither, from the Indian Natives) then, such Lands as those were not prayed for, or granted, and that will exclude his Claims, down to the Southern Boundary of the Dutch Possession, namely to Cape *Henloope*.

There is a fourth Description in his Charter, that his Lands were to extend to such Part of *Delaware Bay*, as lay under the 40th Degree where *New England* ended. And where did *New England* end? Why, at the 39th Degree compleat; For the 40th Degree inclusively was, before, granted by the Crown to the Council of Plymouth for the Ruling and Governing *New England*.

And, Note well, The Crown, in many Acts and Instruments, since 1632, has had occasion to speak of Lord Baltimore's Bounds; Upon every which occasion (without any Exception) they emphatically speak of his Bounds as extending to the 40th Degree; not through it, nor to the 41st Degree, as he would construe it.

Note also, the Degrees must be now taken, as then known, altho' the Knowledge of those Times was ever so erroneous.

Complaints



1633. June 28. } Complaints were made to the King, from the first Colony of *Virginia*, that my Lord *Baltimore*, having a Grant of Land within their Limits, hurt their Colony, but nothing was determined by the King in Council thereon; For, by two Orders of this Date, the Lords of the Council left my Lord *Baltimore* to his Patent, and the other Parties to the Course of the Law.
1635. April 25. } Several Copies of Papers, from the Board of Trade, containing the Resolutions to surrender the Great Charter by the great (unweildy) Council of *Plymouth*, to the King; The Petitions of the Governor and other Members, to have particular Parts of the Lands regranted to them respectively; and the Copy of the Surrender to the Crown, from the Board of Trade's Books.
- May 1. }
June 7. }
- Lord Baltimore's Old Map. Sept. 8. } Note. We have, out of that great Tract of *New-England*, so surrendered, no less than Nine New Colonies, which have been since created by the Crown, viz. *Pennsylvania*, *New Jersey*, *New York*, *Massachusetts Bay*, *Connecticut*, *Rhode-Island*, *New Hampshire*, Province of *Main* and *Nova Scotia*. So that if that Old Surrender does not, regularly, appear, it ought to be presumed; (And, indeed, the Surrender is not enrolled in Chancery.)
- A thin Quarto Book printed this Day, Month and Year, by the then Lord *Baltimore*, three Years after his Patent, giving an account of his Landing and Settling, and of his Patent, and of the Country so granted to him, and containing a Map of his Country, with his Arms thereon. This valuable Book was borrowed out of Sir *Ham Sloan's* Library, who, it's proved, has had it 40 or 50 Years.
- And here he manifestly, so early, made a Claim from the 38th Degree compleat, to the 40th Degree compleat.
- But he, there, expressly made that 40th Degree compleat exactly to intersect, or cut, the Head of *Chesapeake Bay*; so far was his Ancestor from imagining that a Part of the Peninsula extended up into the *Main Country*.
1638. April 4. } It's pretended that one *William Clayborne* was posselt of the *Isle of Kent*, in *Chesapeake Bay*, within the Bounds of my Lord *Baltimore's* Patent, and that he petitioned the King not to be disposselt by Lord *Baltimore*: But that the Council were of opinion that that Island, (being within my Lord's Limits) was well granted to my Lord.
- And this is made use of to shew the very early Opinion of the Lords of the Council, that my Lord was to have to his Limits and Bounds, whether *Culta* or *Inculta*.
- But this is a shameful Invention (not to say Forgery) of a blank, unattested, suppoed Copy of a Paper, first set on foot, and produced, by Lord *Baltimore* in 1685, and then, given up by him; and again, revived, by the pretent Defendant, upon an *ex parte* Hearing at the Board of Trade, in 1734.
- When there never was any such Order, as is abundantly charged in our Bill, and fully proved by many Witnesses, and the Council Books, of that Time and that Day, are extant, and many Orders therein, but not a Syllable of any such final Order, nor yet of any Reference of such a Petition, which should, and is supposed to, have preceded it.
- 1638 & 1639. } We have *Dutch Records* from *New York*, protesting against the *Swedish* Governor *Peter Minuit*, settling in the South River (now *Delaware*) which has been, many Years, in the *Dutch* Possession, and settled above and below by the *Dutch* Forts. — Also a Judgment condemning a Man, for an Offence, to serve the *Dutch West-India* Company, along with the Blacks, at the *South River*. — Political Ordinances forbidding every Inhabitant of *New Netherlands* selling Powder, &c. to the *Indians*, &c. on pain of Death. Also forbidding all Persons to go with Boats and Vessels to the *South River*, without a Writing from the Director General at *New York*, on pain of Forfeiture of Ship and Cargo.
1642. } *Dutch Records*, from *New York*, containing an Account that some *English* had, now lately, dared to come into our Limits, in our *South River* at the *Skuikill* (Note, that's up as far North as the City of *Philadelphia*) where they have seated themselves, against our Fort *Nassau*, without Commission from any Potentate: Resolving that they shall be disposselt, sending Orders to their Factor *Jan Janson Van Elpendam* to dispatch Sloops and Men to disposselt them, bring them hither, and ruin the Place to the Ground.
1644. } Another *Dutch Record*, from *New York*, whereby the *Dutch* Fiscal-General protests against *Govert Cookermans*, that he should not carry on Trade, in the *South River*, where *Van Elpendam* is, with the *Indians*.
1646. } *Dutch Records*, from *New York*, granting to 4 *Dutchmen* 100 Morgen (200 Acres) of Land, to settle 3 or 4 Plantations, upon the West-side of the *South River*, to be subject to the Sovereignty of their High Mightinesses, with Promise of more Land if they build.
1647. } *Dutch Record*, from *New York*, being Resolutions of the Governor and Council there, that *Andries Huddie* shall continue Factor at Fort *Nassau*, in the *South River*, of the *New Netherlands*, for the Service of the *Dutch West-India* Company, and to have Pay as other Factors.
1648. } *Dutch Record*, from *New York*, of a Report or Representation made by that Factor *Andries Huddie*, containing an Account of the Proceedings of *Johan Prints*, Governor over the *Swedish* Troops in the *South River* of *New Netherlands*, as also of the *Swedish* Settlement in the said River. He takes notice of the several Forts built there by the *Swedes*, some in 1638, tho', says he, the *Dutch West-India* Company had Forts, Men, and Stores of War, there, above 14 Years before the *Swedes* had; and contains a very particular Account of the several Settlements there made, both by the *Swedes* and *Dutch*, and the continual Contentts and Quarrels between those two Nations, touching their Right to the same.
1649. } The *Dutch* purchased Lands from the *Indians* in the *South River*, but those Lands were on the East-side of that River.
1654. } From the same *Dutch Records* at *New York*, a Protest entred, made by the *Swedish* Factor, against the *Dutch* Government, for stopping and seizing the *Swedish* Ship going to the *South River*, which they did upon pretence that the late *Swedish* Governor *Johan Prints*, or the new *Swedish* Governor *Jan Rysing*, had taken Fort *Casimir* from the *Dutch*. — And Counter-Protests, from *Peter Stuyvesant*, the *Dutch* Director-General, and the Council, at *New Netherlands*, wherein they insist, and offer to prove, there, on the spot, by authentick Writings, and by Christian and *Indian* Witnesses, their undoubted Right and Property to the Lands in the *South River*, by virtue of the first Discovery, Ancient and first Possession, many Years before any other Christian Nation, the erecting of divers Forts, above, below, and in the Centre, of the said River, both on the Eastern and Western Shore, purchase from the *Indians*, &c.
1655. } The Disturbances continuing, between the *Swedes* and *Dutch*, the *Dutch* Director-General takes up Money, upon account of the *Dutch West-India* Company, for an Expedition to the *South River*, and to pay the Soldiers there; Also, a most solemn and extensive Commission, granted by *Peter Stuyvesant*, the *Dutch* Governor, and the Council, at *New Netherlands*, appointing one *John Paul Jacques* Vice-Director and Chief of the *South River* of *New Netherlands*, over the Fortresses, Lands and other Places lying on the said River, and for Security of Fort *Casimir* and other Places, to cause all Matters to be observed relating to Trade, Policy, Justice and the Militia, and also over the Soldiers, Sailors, free Persons, high and subaltern Officers, and to command all, for the *West-India* Company's Service, and administer Right and Justice, as well Civil as Military, &c.
1656. } From the same *Dutch Records*, in *New York*, Entries of Nine Grants from the Director-General and Council of *New Netherlands*, unto several Persons, of some Lots of Lands in the *South River*, near Fort *Casimir*, (wherein they mention 67 Lots having been laid out) and granting also Plantations in the *South River*.
1657. } The Director and Council of *New Netherlands* (by Orders from *Holland*) made a formal Conveyance, unto *Jacob Alricks*, Director and Commissary under the City of *Amsterdam* over their Colony in the *South River*, of the Fortrefs *Casimir*, then called *New Amstel* [now called *Newcastle*] with all the Lands thereunto, according to the first Sale from the Natives, dated 19 July 1651.
- And the Description of those Lands is extremely material, viz. Beginning, on the West-side of *Christiana Kill*, to the Mouth of the Bay or River, called *Boonties-Hook*. (So that they, then, held that the End of the Bay, and the Beginning of the River, was, as our Witness now say, at *Boonties-Hook*.)
- To hold to *Jacob Alricks* to the Use of the City of *Amsterdam*.
1658. } The *Dutch* Director at *New Netherlands*, *Peter Stuyvesant*, lays before the Council there, several Proposals, for regulating the Company's Affairs in the *South River*, collecting the Customs there, settling sundry Persons near a Fort there called *Altena*, beginning Plantations, &c. there, and the Council advise him to go thither, himself, about those Matters.
- And, the same Year, the said Director and Council appointed a new Governor, over the *South River*, one *William Beckman*, and give him all the like extensive Powers and Authorities as were granted in 1655, to *John Paul Jacques*.
- Note. We have one old living Witness, *William Peterson*, who knew the *Dutch* in Possession in 1658.
- Old Dutch Map. } An old *Dutch Map*, sans Date, but it calls *New Amstel*, by the Name of Fort *Casimir*; Ergo, it must have been made before 1657; for, then, we see, it had got its new Name of *New Amstel*.
- And this old *Dutch Map* makes the Line of 40 compleat, not more than 3 Miles above the Head of *Chesapeake Bay*.
- And lays down both Cape *Cornelius*, at the Mouth of *Delaware Bay*, and then, Cape *Henlopen*, a great deal South of it, exactly like the Map we went by in settling the Agreement.
- And, surely, all this shews (even to the Conviction of the Defendant, tho' unwilling to be convinced) that the *Dutch* were posselt of *New Netherlands*, as their Head-Settlement, and of the *South River* and the Lands expressly on the West-side of the *South River*, as appurtenant to their great Settlement.
- For, in this old *Dutch Map*, Cape *Hinloop*, Fort *Casimir*, Fort *Christiana*, *Mattinakonk*, and *Skuikill*, Places named in these Records, are all laid down on the West-side of the *South River*.
- These shew that the *Swedes*, also, posselt, and that continual Quarrels were between those Nations.
- The Great Charter of *New England*, which had been granted to the Council of *Plymouth*, having been surrendered back to the Crown, King *Charles* the Second, soon after his Restoration, resolved to take advantage of those Quarrels between the *Dutch* and *Swedes*, and to disposselt them both; and to erect several Provinces there, under the *English* Crown.
- And accordingly
1663. Mar. 12. } King *Charles* granted to the Duke of *York*, in Fee, a large Territory, Part of the Main Land of *New England*, and, amongst many other Descriptions, all the Land from the West-side of *Connecticut River* to the East-side of *Delaware Bay*, together with all Lands, Soils, Rivers, Harbours, Woods, Waters, Royalties, Profits, Commodities and Hereditaments to the said Lands and Premises belonging, and appertaining, with their and every of their Appurtenances.
- 16° Car. 2. } If the Lands, even on the West-side of *Delaware Bay*, were really and truly appurtenant to the Great Territory granted, which lay on the East-side, then, as such, they might well pass.
- And that they really were so, and were thought to be so by every body, will most clearly appear, immediately.
1664. April. 2. } The Duke of *York* immediately gave a Commission, reciting the Grant from his Brother King *Charles*, and appointing *Richard Nicholls* his (first) Governor over the Places so granted to him, which Commission is enrolled at *New York*.
- And to shew the Intention of making this Grant,
- April 23. } King *Charles* gave several Setts of Instructions to the said *Richard Nicholls*, and also to Sir *Robert Carr*, *George Cartwright*, and *Samuel Maverick* (which are entred at the Board of Trade) to reduce the *Dutch* in or near *Long-Island*, or any where within the Limits of his Majesty's Dominions, to an entire Obedience to his Majesty's Government.
- April 26. } And, three Days after, the King gave those four Commissioners a Commission (which is recorded in *New York*) to determine all Complaints in all Matters Military, Criminal and Civil, and to proceed in all Things for settling the Security of the Country.
- July 3. } Those Commissioners, not being then arrived, we have the last Acts under the *Dutch* (for that time) being a Grant enrolled at *New York*, from *Alexander Hynioffa*, Governor of *New Amstel* under the City of *Amsterdam*, of a large Tract of Land near that Fort, unto one *Gerret Van Swereingen*.
- Now the King's Grant and Commission got over, together with four Ships of War, to *New Netherlands*, and there we find recorded
- August 15. } A Proclamation that all Foreigners must be expelled, or else reduced to the Obedience of the King of *England*. — The *Dutch* Governor *Peter Stuyvesant*, sends to know why the King's Ships come there. — Colonel *Nicolls* answers and requires the Surrendry of all Forts and Places posselt by the *Dutch*, and particularly, of the Town upon the Island *Manhatoes*, with Promise of Life and Liberty to those who submit, and Threats of the Miseries of War to those who refuse. — The *Dutch* Governor *Stuyvesant* insists on the Right of the *Dutch* particularly to the *South River* from 1622. — Colonel *Nicolls* gives Orders to the Commander of the Squadron to reduce the Place. — Governor *Stuyvesant* prays that Hostilities may cease, and to treat of an Accommodation. — Colonel *Nicolls* insists on his first Summons, and will treat on nothing save Articles for Surrender of the Towns and Forts. — Governor *Stuyvesant* commissions Persons to treat, and Colonel *Nicolls* also. — On 27th August, Articles of Surrender agreed on, and on the 29th ratified by Governor *Stuyvesant*.
- August 29. } Thus *New York* itself was reduced, and from that time called *New York*.
- But did they stop there? No. There were Appurtenances.
- In 5 Days after *New York* was taken, viz.
- September 3. } Governor *Nicolls*, and two others of the Commissioners, grant a Commission to Sir *Robert Carr*, dated at the Fort in *New York* in the Isle of *Manhatans*, reciting that the *Dutch* have seated at *Delaware Bay*, and drawn a great Trade thither, which if they be permitted, the gaining of this Place will be of small advantage; Therefore being determined to bring that Place and all Strangers thereabouts to his Majesty's Obedience, they appoint two of the Frigates and the Soldiers to go there, under the Command of Sir *Robert Carr*, and reduce the same. [There are also some Instructions to Sir *Robert Carr* about my Lord *Baltimore*, but we had better avoid them.] And on 1st October, a Treaty was there struck up, between Sir *Robert Carr* and the Burgomasters, on behalf of themselves and all the *Dutch* and *Swedes* inhabiting in *Delaware Bay* and River, to submit to the *English* Crown, and to be protected in their Estates, with Liberty of Conscience, &c.
- October 26. } Governor *Nicolls* begins the Exercise of his Power over *Delaware Bay*, for he licenses a Person to go from *New York* to trade there. And certifies that a Quantity of Powder and Shot were spent at the reducing the Fort at *Delaware*. And the Commissioners sent away one of the Frigates to sail for *Portsmouth*, to give notice to the Duke of *York*.
- Now please to consider from the following Proofs whether *Delaware* was, or was not, taken to be an Appurtenance to *New York*.

1665. Governor Nicolls at New York grants a Licence to a Man to alien Lands at Newcastle, to another to trade with the Indians about the Hoarekills in Delaware Bay, making due Entry of his Goods with the Officers at Delaware; and another Licence to that Man to pass from New York to Delaware, from Delaware to Maryland (so they were distinct Places) and back again.
1666. Governor Nicolls at New York directs the Collector and Receiver General of the Customs at Delaware to stop the usual Collection of the 10ths of all Goods, Liquors, Peltry, &c. and give them some temporary Privilege for Encouragement of Trade; so that, until contrary Orders, No Custom shall be paid in Delaware River, but nevertheless they must make an Entry of their Goods.
1667. The Treaty of Breda was made between England and Holland, whereby each Party was to keep and possess, in Propriety, all Lands, Places and Colonys, which, during that War, or at any Time before that War, had, by Force of Arms, or any other Way, been gotten and obtained from the other.
And after this Cession from the Dutch our Instances grow more frequent.
Governor Nicolls at New York gives a Grant of Confirmation unto five Persons, in Fee, of a Plantation to each of them at Newcastle.
Now, from an infinite Number of Instances, Francis Lovelace appears to be the [second] Governor of New York, but his Commission as such does not appear.
1668. Almost the first Act he did at New York was to settle the Government and whole Constitution, Civil and Military, in Delaware. Appoints a Garrison and a Commission Officer. The Civil Government to be continued till further Order. If any Complaint be made against the Civil Magistrates, the Commission Officer Captain Carr is to call a Council of five Persons, there named, to determine the same; that Council to advise him in all Affairs relating to the Indians. Fines for light Offences to be moderate. The new appointed Counsellors to take the Oath to his Royal Highness. The Laws of the Government established by his Royal Highness to be communicated to the Counsellors and others. No War to be made with the Indians, till you receive Directions from the Governor. In all Matters of Difficulty and Importance, you must have recourse by way of Appeal to the Governor and Council at New York.
He also at New York granted out Lands, at Newcastle 120 Acres, and another 46 Acres, and a Licence to a Man to alienate a House and Ground there.
A Letter from the late Governor Nicolls and the present Governor Lovelace, jointly, dated at New York to Captain Carr, (who was the Commission Officer at Delaware) to call his Council for Civil Affairs, to give necessary Orders for the good Government of Christians and Indians, and especially to prevent selling strong Liquors to the Indians; but what You conclude must be remitted hither, to New York, and shall be confirmed as if we had been present.
And many other Acts and Orders made at New York relating to the Affairs of Delaware.
1669. Governor Lovelace at New York makes 14 several Grants of Lands in and about Newcastle, and several other Parts of Delaware.
Also made a general Order at New York, that the Inhabitants, in and about Delaware, are under this Government, and they, as well as others, must bring in their old Patents of the Dutch Tenure, and take out new Grants, under Penalty of the Law.
And other Orders or Commissions, dated at New York, appointing William Tom to take up, kill, or mark wild Hogs at Delaware. — Also ordering the Officers at Delaware to issue a Proclamation in the Governor's Name, for the apprehending a Swede and a Finlander, (call'd the long Finn) who were seditious Persons. — Also Orders, that the People about Delaware may have an Enlargement of their Bounds at Apoquinimi, so that a Draft be taken of the Place, and sent to the Governor. Whereupon, those who settle there shall have Patents. — Also, that some Families from Maryland may come and settle below Apoquinimi, within the Government, it tending to increase the Inhabitants within those Territories; but a Draft is to be taken of the Land, and a Return of it made to me, that they may have Patents. — Commission to William Tom to collect Quit-Rents from All Persons holding Lands at Delaware, or Delaware River. — Orders in private Causes depending at Delaware. — Minutes of Governor and Council, thanking Captain Carr for securing the long Finn and others, and preventing an Insurrection at Delaware, and ordering him to keep the Persons in Custody, till the Governor himself goes, or sends, to examine into, and try the Fact; and to take an Account, in the mean time, of the Estates of the Persons concerned in that Plot. — The Governor's Letter thereon to Captain Carr, thanking him for the good Service he had done in that Matter to his Royal Highness, and bids him enjoin the meaner Persons concerned to labour in the Reparation of the Works about the Fort. — Minutes of the Governor and Council at New York, that the long Finn deserves Death, but that he be whipt, branded, and sold to Barbadoes. — They confirm the Sentence of Death passed upon an Indian who ravished a Woman at Delaware, by ordering that Sentence to be executed. — The Governor writes to Captain Carr, that as to the ordinary People, concerned with the long Finn, I have thought fit to excuse them by a Pecuniary Mult. — A special Commission from Governor Lovelace at New York, to try the Persons concerned with the long Finn. — Resolutions of the Governor and Council at New York, that there be an Officer appointed to keep the Peace at Newcastle, and that a Commission be sent for that Purpose. — Also Orders about releasing one Douglass at the Whorekills, who had misbehaved there. — A Commission sent from the Governor of New York to several Persons to be Scout and Commissaries at the Whorekills, to keep good Orders there for his Royal Highness, to try all Matters in Difference under 10 l. there, amongst themselves. — But for what shall be above, and for all Criminals, You must apply to New York. — Also now lays on again, the Customs of 10 per Cent. at the Hoarekills, on all Goods, appoints an Officer there to receive it, and to render the Governor an exact Account.
Note, The Place then called Hoarekills, was a very large District or County, and in one Part of that County there was a Town, which Town is now called Lewes Town, and that particular Town is a little within the Land, not far from our Cape Cornelius.
1670. A great Number of Letters, and Orders and Commissions, made and granted by Governor Lovelace, and the Council at New York, viz. — A Pass to a Man to go to Newcastle, or any Place in Delaware River. — The Governor sets aside an Order made at Delaware for an Injunction in a private Suit between Parties. — Gives Orders to Captain Carr to make Enquiry into a late Murder, and to demand the Murderer from the Indians, to put themselves in a posture of Defence, and muster the Burghers. — To abolish the Customs, again, at the Whorekills upon the Inhabitants Request, and under Conditions. — A Licence to trade with the Indians at the Whorekills. — A Commission to take up Mill-stones at the Whorekills. — Orders Captain Carr to disband some of his Men, now in Winter, when no Fear of any Indian Attempt, and take them on again in the Spring. — Commission to James Mills to be Surveyor of Lands at the Whorekills, and Parts adjacent. — Licence to a Man to purchase Lands South of the Whorekills, the Draft to be returned to me, that he may have a Patent. — Instructions to send the Governor an Account whether the Inhabitants are encreased, or decreased, at the Whorekills, and whether any more Families will settle there under his Royal Highness, and whether the Scout there is to be changed this Year or not; and to send the Governor the Names of two Persons, for Scout, of which he will chuse one, to remove the Customs, and to restore them to their ancient Liberty.
1671. The Records from the Secretary's Office of New York of this Year are exceeding numerous, viz. Seven Grants entered at full Length from Governor Lovelace there, as the Duke of York's Governor, unto sundry Persons, for many Parcels of Land in Newcastle, and what is now called the Three Lower Counties, referring the Quit-Rents to the Duke of York. — The Governor's Release to a Grantee, of the Forfeiture, for not having settled Lands in Time, which had been granted to him. — A Special Writ in an Action of Debt, commanding the Defendant residing at Newcastle to appear in the Court at New York, and directed to any of the Officers at Delaware. — Governor Lovelace's Commission at New York, appointing a Surveyor of Lands on the West Side of Delaware River. — His Special Commission, appointing the Magistrates there a Court of Oyer and Terminer. — Ordering the Officers to permit a Brief to be collected there for building a Lutheran Church at New York. — Governor Lovelace's Permit for a Ship to go to Newcastle, and from thence up the River Delaware. — A Licence to a particular Person to trade to Delaware. — A Pass to another Person to go up the River there, to trade at the Swedes Plantation. — Many Orders from Governor Lovelace at New York to Captain Carr at Delaware, about Military Affairs, about Wars and Disturbances from the Indians, severely reprimanding him for receiving the Duke's Pay, and letting the Fort run to Decay, and not digesting the Inhabitants into Military Form, nor having armed the one half of them. — The Governor's Order, taking off again, now, the Prohibition which had been formerly ordered against exporting Corn from Newcastle, and any Part of Delaware River. — Numbers of Minutes of the Governor and Council at New York, relating to sundry Affairs at Newcastle, Delaware, the Whorekills, &c. Containing political Ordinances to build a Block-House, keep Watches, prohibit distilling of Spirits, to licence and restrain the Number of Victuallers, to appoint Constables, as in the rest of the Duke's Dominions, to confirm such Grants of Lands there as the Officers had granted, the Whorekill to have Officers subordinate to those at Newcastle. — But, for the future, the Officers there, are not to grant Lands, but the Persons who want the same must apply to New York. — And, as to the Tenure of the Land at Delaware, it's to be held in free and common Socage, as the Duke by the King's Patent holds all his Territories in America, only with this Addition, that they must pay the Quit-Rents, as an Acknowledgment to his Royal Highness. — Prohibiting, on Pain of Death, selling any Powder, Shot, or strong Liquor to the Indians, &c.
In short, the Records of this single Year prove Instances, of every sort that can be conceived, of Delaware being appurtenant to, and entirely dependant on, New York, while under the Duke of York.
- Ogilby's Maps. In this Year was publish'd Ogilby's America, wherein he gives an Account of the New Netherlands. Publishes a Map of Virginia, being a Copy of Captain Smith's Map, only with more Names of Places then added. Also publishes a Copy of Lord Baltimore's Map of Maryland, exactly like that which my Lord himself publish'd in 1635. only the Line of 40 is carried seven Miles above the Head of Chesapeake Bay. And publishes a third Map of New York, in which this King Charles's Geographical Printer, in the Year 1671, lays down both Cape Cornelius, and Cape Henlopen, as two distinct Capes, exactly like the Map my Lord Baltimore made use of.
- Also, in this Year, there was an Order of Council to declare a new War, against the Dutch.
1672. Governor Lovelace's four Grants at New York, for Lands at Newcastle and Delaware, to several Persons. — His Orders to the People at Whorekills, — to make a new Election of Scout and Commissaries, and return them to him to be confirmed, and his Order confirming some of those which they so return'd. — His Order, excusing a particular Person in Delaware River from training in the Militia. — His Passes and Permits to Ships, and to divers single Persons, to go to, and trade at Whorekill, Delaware, and up the River. — A particular Licence to one Person to distill. — His Commissions at New York, appointing the Bayliff at Newcastle, the High Sheriff at Newcastle and Delaware River. — A Person to seize stray Horses at Newcastle, and on the West Side of Delaware, for the Duke's Use. — Appointing a Receiver of the Duke's Quit-Rents at Newcastle and Delaware River. — Many Minutes of the Governor and Council of New York, relating to the Affairs of Delaware, viz. That Newcastle be a Corporation, and consist of such and such Officers. — And to try Causes, there, as far as 10 l. without Appeal, their Scout to be turned into a Sheriff, and he to be elected annually. The Garrison to be continued in Pay. A Man sent from the Whorekills, and censured at New York, for Contempt of the Authority of the Duke's Court held there; but he to give Security for the Peace, and ask Pardon of the Magistrates. — Leave given to the Whorekill to lay a Duty on strong Liquors for one Year. — Orders, that all Ships from New York be at Liberty to go up the River to trade, but None to have such Liberty, but such as go from New York directly. — Orders in Equity, touching a Matter arising in Delaware River. — Order at Common Law confirming a Judgment, and issuing an Execution, against an Island in Delaware River, the Estate of the Defendant.
- And, amongst other Things, Governor Lovelace's Letter in August to Governor Calvert, demanding Reparation for a great Injury done by one Jones at the Whorekill. And another Letter (in October) from Governor Lovelace to Captain Carr, taking Notice, that the Marylanders had forcibly possess'd themselves (then) of the Whorekills, and of the Goods of some of the Inhabitants.
Which they did not keep the Possession of long, as you'll see.
1673. In April Governor Lovelace at New York made two Grants of Lands at Newcastle. — And the Governor and Council order a Commission to be sent to the Officers and Magistrates at Delaware, to go to the Whorekill, to keep a Court in the King's Name, enquire of all irregular Proceedings there, and to settle the Government, and Officers there, as formerly, under the King's Obedience, and the Duke's Protection. — And in June the Governor and Council raised the Value of the Coin at Delaware (Wampum) one Third, in order to encrease the Quantity of it.
But, it being War with the Dutch, and many Dutch Inhabitants left there,
It appears by Dutch Records in the Secretary's Office in New York, that a Dutch Squadron came off of Hudson's River in New York the 12th of August, held a Council of War there, appointed Captain Anthony Colue, a Dutch Captain of Foot, to be Governor General, and in Chief Command, over this Conquest of New Netherland, with all its Appendencies, beginning where? From Cape Hinlopen, or South Side of the South, or Delaware Bay, and 15 Miles more Southerly, (with the said Bay and River included) as the same in former times, by the Directors of the City of Amsterdam, and afterwards by the English Government, in the Name, and under the Duke of York, was possess'd. — Next appears a Commission, granted 19th September, appointing Peter Alricks to be Commander and Sheriff in the South River of New Netherland, last called Delaware, beginning from Cape Hinlopen, and as much more Southerly as the same heretofore, in the time of the Dutch Government, was possessed and enjoyed, up to the Head of said River. — And a Grant of 500 Acres of Land South of Apoquinimi River to two Men, from this Dutch Governor Captain Colue, at New York.
But this Dutch Possession was soon over.
- Treaty between England and Holland. For on 28 February this Year, by the Treaty of Peace concluded at Westminster, all Countries taken by either from the other, were to be restored to the former Owner.
1674. June 29. King Charles the II^d re-granted the same Tracts, with the Appurtenances, and in the same Words, as was done 11 Years before in 1663. to the Duke of York.
New Grant to the Duke of York. But those Words, nevertheless, had a fuller Meaning, now, for these Lands in Delaware had been most clearly held, by the Duke himself, for 11 Years, as Appurtenances to New York, besides that the Dutch had held them, as such, clearly from the Year 1629, before that.
Note well. This New Grant to the Duke of York contained an expresse Power to him to expel all Persons as should, without his Licence, attempt to inhabit within the Limits of the Territorys thereby granted.
In two Days after this New Grant the Duke of York appointed Edmond Andros, Esq; his (third) Governor, and upon 31 October 1674. the Dutch delivered up to him New York.
In two Days after that, he, by Proclamation, re-established the Magistrates at New York, and also at Delaware River, except Peter Alricks, who had proffered himself to the Dutch, and had acted very violently as their Chief Officer.
And Governor Andros, instantly, by an Order, appoints a Sheriff, and a Secretary at Delaware, and appoints Persons to take Possession of the Fort there, or any Part of Delaware, and to remain in Command there. Appoints two Persons to receive Quit-Rents, Customs and Excise, as established by the Duke before the coming in

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in of the Dutch, and to return to the Governor an Account of all other Matters relating to the Revenue. — And afterwards granted regular Commissions to them, for those Purposes. — He appoints those who had been in Office before the Dutch came in in July 1673. to be Commissarys in Newcastle and Dependancys, to act according to the Laws used amongst them during the Duke's Government in Governor Nicolls and Governor Lovelace's Time. And impowers them to elect a Constable, in each of the Towns, as directed in the Laws establish'd by the Duke. Appoints five Justices for Newcastle, and five more for the River. And particularly grants a Commission on 6 November to two Persons, *int. al.* to repossess and settle the King's Subjects in their just Rights at the *Whorekill*. — On 11 November he grants a Commission at New York, to administer the Oaths to the Commissarys at Newcastle, to those of the Court up the River, and to those at the *Whorekill* in the Bay. And on 9 Jan. Governor Andros's Letter of Thanks to his Commissioners, for having settled the Magistrates — in Newcastle — up the River — and at the *Whorekill*. [So that we see Lord Baltimore did not keep Possession of the *Whorekills*. — His Attack was about October 1672. The Dutch entered July 1673, and held New York, and Delaware too, till 31 October 1674. And the Duke of York had re-settled the Magistrates there before 9 Jan. 1674.] — Governor Andros goes on, confirms judicial Proceedings, gives Captain Cantwell Orders about the Fort at Newcastle, appoints him Surveyor for the whole River and Bay, orders him to give new Comers a reasonable Quantity of Lands, orders an Execution upon a legal Judgment, gives him Directions about the Militia, and particularly as to the Militia at the *Whorekills*, where he says their Number is too small for a Company yet, but Cantwell may appoint a Lieutenant and Sergeants to command there. Sends for an Account of the Customs, to be remitted to the Duke's chief Collector at New York, &c.

1675. The Transactions of these Years by Governor Andros and the Council at New York, relating to Upland, Newcastle, Delaware River, and Bay, are most excessively numerous; the shortest Abstract that could be framed of them takes up very near Nine Sheets of the printed Brief, from fo. 43 to 51, both inclusive, and contain very many Instances of every Sort of Acts of Ownership, Proprietorship, Jurisdiction and Government over that whole Country, to the utmost Degree, that can enter into any one's Imagination, *viz.* Orders to make in the Duke's Name, and Purchases actually made, of many Parcels of Lands from the Indians, infinite Numbers of Grants of Lands on the West Side of Delaware, surrounding every River and Creek mentioned in our General Map, from up as far North as *Skunkkill* River, (which is as high as the City of Philadelphia) down South to the *Whorekills*, South of the *Whorekills*, 10 Miles South of the *Whorekills*, on *Rehobath* Bay, South of *Rehobath* Bay, and four Miles South of *Rehobath* Bay. — Granting Lands at the *Whorekills*; and yet said to be seven Miles distant from the *Whorekill* Town, which shews the *Whorekills* was a County or District. — Commissions to the Justices and to the Courts, at Uplands, at Newcastle and Dependancys, at *Whorekill* and Dependancys. — To Clerks of the Court there. — To Sheriffs, To Surveyors of Lands. — To Receivers, and Collectors, and Sub-Collectors, of the Customs, and Clerks of the Permits and Customs. — Settling the Duty and Customs. — To Receivers of the Duke's Quit-Rents. — Prohibiting Exportation of Corn. — Prohibiting distilling. — Ordering stray Cattle there to be seized to the Duke's Use. — Commissions of Oyer and Terminer granted to the Magistrates there. — Special Courts held there by Governor Andros in Person, when he went thither. — The Limits of the Jurisdictions of the several Courts settled. — Settles them as a Court of Sessions. — Gives them the Power of a Court of Equity. — Directs what Causes shall be try'd by Juries, what without. — Where their Judgments shall be final, and where Appeals shall be allowed. — Appoints the Days and Times when each Court shall be held. — And the *Whorekills*, and other Places, made subordinate to the Court at Newcastle. — And that at Newcastle made subordinate, and Appeals referred from it, to New York. — Many Determinations, on such Appeals, and Writs of Error brought up to New York. — Libertys granted to the Court at Newcastle to prove Wills, and grant Administrations, in small Cases; but above 20 *l.* must apply to New York. — Bills in Equity filed at New York, and Orders to injoin legal Proceedings thereon at Newcastle and *Whorekills*. — Changing the Name of the *Whorekills* to *Deale*. — Passes to particular Persons to go from New York to Delaware Bay, and the South Parts thereof. — Permits to Ships to sail quite up that River. — Directions about Trade. — To prevent Interlopers. — About Customs. — To observe the Book of Laws establish'd by the Duke. — Appoints several Commanders in Delaware River and Bay. — A Captain and Ensign of the Company of Foot at the *Whorekills*. — Sends Supplies of Mullet Bullets to Delaware. — Directs the Manner of raising Land-Tax, Poll-Taxes, and publick Levys. — Orders about the Soldiers and Militia. — the Block-house — the Weigh-house — the Store-house — the Prison — the Stocks — regulating Weights — the Vendu Master, and his Fees — the Surveyor of Lands, and his Fees. — Orders a publick Seal for Newcastle. — Sometimes remits Quit-Rents for three Years, for Encouragement. — Other Times orders, that those who don't settle in Time, or who don't pay their Quit-Rents, shall forfeit their Lands. — Gives Direction to the Courts there to order Surveys of Lands for People, but those to be sent up to him to grant the Patents. — Giving the Court and the Officers at Newcastle a Jurisdiction over Persons and Things on the East Side of Delaware, which they exercised. — Orders about the Indians, and some Murders they had committed, and some Disturbances apprehended from thence, &c. &c. &c. — Also several Deeds from private Persons, wherein they write themselves of Delaware, belonging to New York, under the Duke of York.

There are two Things worth particular Notice, *viz.* that on 24 June 1680. the Duke of York appointed Mr. John Lewin his Agent, to enquire into the Estate, Rents, and Revenues there, and the Duke's Commission to him is entered, not only in the Records in the King's Province at New York, but also in the Records of every one of the three Lower Countys, now called Newcastle, Kent, and Suffex.

The other Matter is, we have Governor Andros's Letter, recorded at New York, and also at Newcastle and Suffex Countys, of the 15 November 1680, that he had obtained the Duke's Leave to go Home, and did design to leave Captain Brockbolts for his Lieutenant at New York.

1680. Mar. 4. }
33rd Car. II. }
Grant of Pensilvania.

King Charles the II^d granted Pensilvania to Mr. Penn. And by the Papers which preceded that Grant, for nine Months together, printed in the Brief, fo. 51. 52. 53. it appears he petitioned for that Grant in lieu of Debts then due to him, and his Father, Sir William Penn, from the Crown. — That the Duke of York was then known to enjoy New York in Propriety, and to be posses'd of Lands on the West Side of Delaware River; and therefore, the Duke and his Agents were, many times, sent to, and heard, before the Grant was made to Mr. Penn; and the Board of Trade (then consisting of the whole Privy Council) told Mr. Penn he must apply to the Duke of York, and get his Consent. — And that the Duke's Agents, at first, insisted that Mr. Penn should be confined 20 or 30 Miles, but, at least, 12 Miles, distant from Newcastle. — And took Notice, that Newcastle was Northwards, and distant from Maryland. — That my Lord Baltimore and his Agents were also sent to, heard, and consulted on, and had Copys of, the intended Grant, and the Bounds; proposed many Restrictions and Alterations therein, particularly, that Mr. Penn's Grant should be confined, Southerly, to the *Susquehanna* Fort. — And that, after very great and serious Consideration, Mr. Penn's Charter was at last granted, with its particular Bounds, which are sensibly to be express'd after this manner,

The River Delaware, and a Meridian Line from the Head of it, to be the Eastern Bounds of Pensilvania.

To extend five Degrees in Longitude, Westwards.

The Beginning of the 43rd Degree, to be its Northern Bounds.

And its Southern Boundary, to be, by a Circle drawn at 12 Miles Distance from Newcastle, Northwards and Westwards, unto the Beginning of the 40th Degree; and then, by a Strait Line, Westward, to the Limit of Longitude above-mentioned.

1681. In this Year there are several Acts done, and Grants and Orders made, by the Lieutenant-Governor Brockbolts and Council, at New York, relating to Newcastle, and the Lower Countys; for, as yet, Mr. Penn had no Grant for them, (tho' he had for Pensilvania.) — Surveys made of Lands, by the Courts in the Lower Countys, and those sent up to New York for Confirmation. — And the Duke of York's Order, that Brockbolts should not remove any of the Magistrates, either at New York or Dependancys. — And Lieutenant Brockbolts's Order to a Person to collect the Quit-Rents in Delaware River and Dependancys, as also the former Arrears, in that Part which was now Pensilvania, touching which (says Captain Brockbolts) I have writ to Governor Markham, the Governor of Pensilvania. — But, (says Captain Brockbolts) as to your Magistrates Desire, to join to lay out the 12 Miles above Newcastle, it is not within their Cognizance, but if necessary, and desired here, shall appoint as shall be proper. — And several private Deeds between Parties, wherein they write themselves of the Lower Countys in the Province of New York.

1682. Many private Deeds recorded, wherein the Parties writ themselves of the Lower Countys in the Province of New York.

August 21. The Duke of York, reciting that he had before signified his Assent to the Committee of Plantations, for the granting the Province of Pensilvania to Mr. Penn, does now release that Province, and all his Right and Title thereto, unto Mr. Penn in Fee.

24. By two several Indentures of Feoffment, the Duke of York conveyed to Mr. Penn, in Fee, the Town of Newcastle, and the Tract of Land within the Compass of 12 Miles about the same, also the other Tract of Land from 12 Miles South of Newcastle to the *Whorekills*, alias *Cape Lenep*.

And in each of those Feoffments the Duke appointed Attorneys to give Livery and Seisin.

And covenanted to make and procure further Assurances.

October 27. Mr. Penn first arrived in America, and, the very next Day, Livery and Seisin was given him of the Town of Newcastle, and the South Tract also. — And the Tenants attorned to him.

And one of the Witnesses to the Delivery of Seisin is still alive, and examined in the Cause, and proves it.

29. The Day after, Mr. Penn summons a General Assembly, both for Pensilvania and the Lower Countys jointly, and in his early Summons, the 2d Day that he arrived there, expressly says, the Duke had granted him to *Cape Henlopen*. — He immediately issued Commissions to the Magistrates and Officers in all the Lower Countys, whose Commissions appear in the Records.

November 21. The Governor and Council of New York issued a Proclamation, to discharge the Magistrates of the Lower Countys from any further Obedience to the Duke of York, and to require their Obedience, now, to Mr. Penn, the Duke's Grantee.

December 6. The General Assembly of Pensilvania, and the Lower Countys, jointly, pass'd their first Law, being an Act of Union to unite the Lower Countys to Pensilvania, as of the proper Territorys thereof, and describe the South Extent of the same to be, down to the South Cape, commonly called *Cape Henlopen*, and by the Proprietary and Governor now called *Cape James*.

18. The Governor of New York writes to Sir John Werden, that Mr. Penn has been posses'd of what the Duke granted to him, and now, (says he) I fear what is left of this Province will not be able to defray the Charge.

25. Mr. Penn appointed New Justices, and limited the Bounds of their Jurisdiction, particularly of Suffex, to extend Southwards to *Affawammet Inlett*, reputed and accounted *Cape Henlopen*, which said *Cape Henlopen* I will, from henceforward, have called by the Name of *Cape James*.

26. And, the next Day, he orders them to lay out 10,000 Acres for a Manor for the Duke of York, to lie on the North Side of *Affawammet Inlett*, as near to *Cape James* as might be. Accordingly, in some very few Months, a Manor was laid out for the Duke, another for Mr. Penn himself, and eight more Tracts for eight other Persons, the Lands for some of which were then bought of the Indian Natives, precisely down to our *Cape Henlopen*. — As by the Returns, Surveys, and Acts of Court appear.

And, from that Hour to this, have Mr. Penn, and his Family, been in constant and continual Possession of the three Lower Countys.

March 22. The Duke of York obtained a Grant, from the Crown to himself, of the Three Lower Countys by Name; and, to shew he intended it for Mr. Penn, in pursuance of his Covenants for future Assurance made not seven Months before, we have the original Grant under the Great Seal.

1683. April 15. and 16. Another more extensive Grant was passing, (if not pass'd) under the Great Seal, of the said three Lower Countys, in a more clear, comprehensive manner, but we don't find it was enrolled.

83. 84. 85. A long Contest, and a dozen Hearings, between Lord Baltimore and Mr. Penn, before the Committee of Plantations, about these Lower Countys — who resolve, October 17. 1685. that the Tract of Land in Dispute did not belong to Lord Baltimore, but were doubtful what were the Boundaries of that Tract? — Heard the Partys, several times, afterwards, with Relation to those Boundaries. — And, at last, agreed that, from the Latitude of *Cape Henlopen*, to the 40th Degree, a Line should run up the Peninsula, to divide the Lands that lay between the Sea, the Bay, and the River of Delaware on one hand, and the Bay of *Cheapeake* on the other.

Lord Baltimore had the Hardiness to petition to set aside that Order, but his Petition dismisd.

1708. Again petitioned, and positively asserted he had never been heard in 1685. obtained a Hearing thereon, before the Queen in Council. His Petition falsified by the Books produced, and again dismisd. And the Queen, assisted amongst others by the then Lord Chancellor, by both the Chief Justices, Holt and Trevor, and the Master of the Rolls, ordered, that the Order of 1685. should be confirmed in all its Points, and be forthwith carried into Execution.

1717. Lord Sutherland petitioned for a Grant of the Lower Countys; It was referred to Sir Edward Northey and Sir William Thompson, Mr. Penn's Agents were heard, and this very Lord Baltimore was a Party, and was heard to that Report. — They stated Mr. Penn's Title, and the supposed Defect in it: But as to Lord Baltimore's Title, they reported that that had received a full and final Determination in 1685. and that such Order had been confirmed in 1700.

1732. May 10. My Lord in the present Agreement agreed that the South Bounds of the Lower Countys should be by a Line to be drawn, West from *Cape Henlopen*, South of *Cape Cornelius*, at the Eastern Part of the Peninsula towards the Main Ocean. Observe the three-fold Description of the Place.

Reflections.

If any one Place can, in Nature, by any Possibility, be considered as appurtenant to another,

Then, the Lower Countys have been, in the Hands of the Dutch, and of the Duke of York, and again in the Hands of the Dutch, and again in the Hands of the Duke of York, from the Year 1629 quite down to 1682, constantly and continually enjoyed, held and governed, as an Appurtenant to the Great Settlement at New Netherland, now New York, in every Instance that the Wit of Man can devise, and in repeated and numerous Instances of every sort.

My Lord Baltimore has never, for one Hour, been posses'd of the Lower Countys, at any time whatever.

They have been judicially declared not to be granted to him, and that Judgment repeatedly confirmed.

Many Acts of the whole Legislature of Maryland repeatedly declare the Lower Countys to be the Territorys belonging to *Pensilvania*. They could not be granted to him in 1632. for the Crown gained them, by Conquest, from an Enemy, but in 1663, and had them confirmed by Cession in 1667; and if they had been formerly in the Crown, they had been granted away by the Crown to the Council of *Plymouth*. The Crown again lost them, in War, in 1673, and afterwards, had them ceded again, by Treaty, in the End of the same Year. The Duke of York posses'd, at times, from 1663. to 1682. but, undisturbedly, from 1674. to 1682. Mr. Penn entered, by Feoffment with Livery and Seisin, in 1682. From that Hour to this, he, and his Family, have continually posses'd, *above threescore Years together*. He has improved, beyond Thought almost. And this, without one Shilling Expence to the Crown, or the Publick, in any Shape whatever. Possession and Improvement was *always* thought a Title in *America*. Was so reported by the late and present Chancellors in 1732. And we hope Mr. Penn (tho' he has almost ruined his Family by it) has done such a Service to his Country, as to merit the like Rule to be observed in *his* Case.

Maps.

Smith's Map of Virginia, and the Peninsula. Printed in 1612. 1624. and 1625.
Lord Baltimore's Map of Maryland. Printed in 1635.
Dutch Map of New Netherland. Vide 1657. April 12. Whereby it appears that that Map (which called a Place, at the time of making it, Fort *Casimir*) must, therefore, have been made before 1657.
Ogleby's three Maps, of Virginia, of Maryland, and of New York. Printed in 1671.
Manuscript Map of Maryland, at the Board of Trade, which, not naming *Pensilvania*, must, therefore, have been before 1680.
Surveys of the Duke of York's Manor, of Mr. Penn's Manor, and of 8 or 10 other Parcels of Lands, quite down to our Cape *Hinlopen*, returned in the Years 1683, and 1684.
Swedish Map of New Sweden, now *Pensilvania*, printed in 1702. (but not proved in the Cause.)
Lord Baltimore's written Map, which he used and markt in 1731, in order to the Articles (not produced or proved by him, but only a Copy of it, to avoid shewing what Notes there were on the Original.)
The Plaintiffs written Map, which they then used and markt in 1731, proved in the Cause.
Our General Map, made up in 1740, proved in the Cause.
The Defendant's own Witnesses, viz.
Hugh Jones, who swears to his Opinion of the Extent of my Lord's Charter, he says, (*Lib. G. fol. 5.*) That he himself, and others, have taken *Observations*, and have run *Lines*, to discover where the Latitude of 40 falls.
William Rumsey, who also swears to his Opinion of the Extent of my Lord's Charter, he says, (*Lib. G. fol. 137.*) That he assisted as a Surveyor in running the *Line* for Temporary Jurisdiction, pursuant to the Order in Council.
Thomas Hynson Wright, who likewise swears to his Opinion of the Extent of my Lord's Charter, he says (*Lib. G. fol. 259.*) that he was sent to review the Cape of *Delaware* and the Sea-side; that he *traversed* the Lower Counties, in order to *plat* the same, and discover where the Tangent Line would run.
And *John Miller* (*Lib. G. fol. 272.*) swears he has taken an *Observation*, at the Place markt Cape *Cornelius*.
Nevertheless, notwithstanding all these Opportunities, my Lord so much affects Darknefs and Obscurity, that he has not proved any one Map, or any one Line, whatsoever, ancient or modern, of any one thing in the whole World.

As to the several Lines for Lord Baltimore's (General) North Boundary.

There was granted to him only a Part of the mere Peninsula itself, not any part of the *Main Continent*.
That part granted him was bounded Eastward by the *Ocean*, only.
And extended *usque ad such Part* of *Delaware Bay* as lay under the 40th Degree.
The Mouth, and most Southern part of *Delaware Bay*, at our Cape *Cornelius*, did lie under the 40th Degree.
Ergo, no part of his North Bounds of his Charter go more North than our Cape *Cornelius*, at the Mouth of *Delaware Bay*.
But he, having Nobody then settled behind him,
Drew his North Boundary, by a Line upon his then printed Map, exactly at the Head of *Chesapeake Bay*,
Desired that *Pensilvania* might be bounded, Southward, by the *Susquehanna* Fort, and in
Run a Line *ex parte*, without Mr. Penn's Knowledge, from the Mouth of *Ozoro*; (being the place where the Fort stood) and run it East according to the Compass; which, (if he had been intitled so far) was running it vastly to his own Disadvantage; for at the Western End of that long Line of 5 Degrees in Longitude it would have run down, too much to the South, by above 28 Miles.
And then, below that Line of 1683, builds his little Log-house of 2 l. or 3 l. Cost.
Now we have given him 4 Miles (even when at the River *Susquehanna*) above that highest Claim.
And we have run his Boundary with the Variation too.
So that, considering it is to run for 5 Degrees of Longitude, that will make a Gore of 5 Degrees long, and in Width from about one Mile at the East End, to the Width of above 28 Miles at the West End. The square Miles in which are no less than 3770.
Surely this is *A Consideration*.

As to my Lord's great Ignorance.

As to the ridiculous and false Pretences that Lord Baltimore was (in general) ignorant, relating to the Affairs of his own Province, and particularly of his own Bounds, or of our Title to the Lower Counties, or that he was any way surpris'd in the Agreement,
(That he was not deceived about Cape *Henlopen*, I reserve to a separate distinct Head.)
The Lord Baltimore's first Opposition to Mr. Penn began, before the Privy Council, and has, from time to time, ever since, continued, down to this Hour; now above Threescore Years, and therefore fit to have an End put to it. It is not quite a New Thing, just now started up.
It continued, and very many Hearings thereon, during these two whole Years, and at length was flatly adjudged against him, by a final Order in Council, that he had no Title to the Lower Counties, and that his Grant did not extend to them.
He petition'd to set aside that Order, upon grofs, false Suggestions, but his Petition was dismiss'd, by Order in Council.
Not contented, he again petitioned, and suggested he had never been heard in 1685, had a full Hearing, personally in the Queen's Presence, and an Order made by the Queen in Council, affixed (amongst others) by the Lord Chancellor, by both the Lords Chief Justices *Holt* and *Trevor*, and by the Master of the Rolls, by which Order his Petition was dismiss'd, and the Order of 1685 was confirmed in all its Points, and was ordered to be carried forthwith into Execution.
The last Lord Baltimore died, and this very Defendant came into Possession of Maryland (now 28 Years ago) time enough to know something of his Country.
The Maryland Law-Book (proved in the Cause) shews that then, and ever since, the Assemblies have been held under this present Charles Lord Baltimore.
Was the Day of the remarkable Report made by Sir *Edward Northey* and Sir *William Thompson* upon the Earl of *Sutherland's* Petition, for a Grant of the Lower Counties. In which Report Mr. Penn's Title to the Lower Counties was most particularly and minutely set forth, and the supposed Defects that were therein. And to which Report this Lord Baltimore was summoned, and heard, and was a Party; and the Attorney and Solicitor reported expressly that, as to his Title, it had received a full and final Determination upon the Dispute which began in 1683.
This very Lord Baltimore made one former Agreement with Mrs. Penn the Executrix, which is charged in our Bill, and admitted by his Answer.
Mr. *Logan* swears, that my Lord had (then) the largest and fairest Manuscript Draught before him, of the Peninsula, that he had ever seen. And that, by his Discourse, then, he seem'd to be very well acquainted then with the Provinces of Maryland, *Pensilvania*, and the three Lower Counties. And then argued (pray observe it) that as the Lower Counties were, as he pretended, within the Limits of the Maryland Patent, it could not but much strengthen Mr. Penn's Title, if my Lord was to release them to him.
Lord *Sutherland* again petitioned about the Lower Counties, and my Lord Baltimore again heard.
In the beginning of this Year he desired *Paris* to tell the now Plaintiffs, he wished their Differences were accommodated.
He desired his own Council, Serjeant *Winne* (who swears he had long been concerned for him in his Maryland Affairs) to meet the Plaintiffs, to try if they could come to an amicable Agreement.
Were the two first Meetings between the Parties.
He then produced his Map.
He says he had had that Map from his own Agents.
He says that he had had it, many Years before that time by him.
He says that he took that Map, as the first that then came to his Hands.
My Lord demanded such unreasonable Terms, that we would not at first comply, but the Treaty broke off.
Governor *Ogle* swears my Lord told him that we would not do any thing by fair means, and that he was resolv'd he would have a Suit.
Paris swears the Plaintiffs complain'd of the heavy Expences they had before undergone, in these Contests.
He petition'd the King, told him that there had been several Orders in 1685, 1708, and 1720, and yet, the Division was not made; and, for want thereof, his Tenants would not submit to his Government, nor would pay him any Quit-Rents, and, therefore prays the King to order us to join with him in settling the Disputes.
Another Contest in Council was the thing we had declared our Dread of the Expence of.
This, and his own Letter thereupon, brought round the Meetings again.
The Parties met, and the Plaintiffs verbally agreed to his own Demand, which (Note) consisted singly how far his general North-Boundary should go, in the Parts where the Lower Counties did not make his Northern Boundary.
His Counsel concern'd in his Maryland Affairs, swears he was at several Meetings.
His Governor *Ogle* swears he was at one.
His Solicitor *Sharpe* swears he was at two.
And swears that Mr. *Beake* was also present (who was my Lord's Secretary.)
It's proved that no one of the Plaintiffs had ever been in *America* then.
He produced a Sheet of Paper, all of his own Hand-Writing, containing all the Descriptions he would have to describe every Part of the then Agreement.
He admits the Draught was deliver'd over, (and it was not executed till 10 May 1732; Nine Months afterwards.)
Mr. *Sharpe's* Letter proves it was, this Night, sent to my Lord himself.
Mr. *Sharpe* then laid it before Councillor *Winne* to settle for my Lord (that very Council who had long been concern'd in his Maryland Affairs.)
The Draught return'd back, with a new Demand, whereas the Circle was to be 12 Miles, which, as Geographical Miles, was indeed 14 Statute Miles distant from New-castle, they should be mentioned as 12 Statute Miles—[now he says, as 2 Miles only.]
A Meeting of all Parties at his House, and that new Demand, with Difficulty, agreed to.
Then he would have his Map grav'd; not ours.
He would have his Mathematician *Senex* grave it; not ours.
He would have his Mathematician's Opinion upon the Articles.
The Plan and the Articles laid, by his own Solicitor, before such his own Mathematician.
He delivers over a further written new Demand of a Clause, to prohibit Trade, by Means of Rivers down into his Bay.
Paris swears that he then declared that His People insisted on that Clause, and, therefore, he must have it.
That also agreed to.
He admits that his Mathematician did give his Opinion in Writing upon the Articles.

- And did grave the Plan.
And that there is no material Difference between his own Plan, and that upon the Margin of the Articles.
He then (and not till then) executed the Agreement.
May 10. Mr. Taylor swears that my Lord, at that time, declared that his People in Maryland had writ to him that he might have had better Terms than those; but that, he was glad it was ended, was very well satisfied, would faithfully execute the Agreement, and hoped to see Mr. Penn in America to put the last Hand thereto.
Could this Man be ignorant of this Affair, or of our Title, or of his own Bounds? Was he hurried, surprised, or unassisted in this Agreement? Or did he force us into it? Dictate his own Terms? Oblige us to comply? Graft upon us, encrease his Demands, from time to time, have all those After-thoughts likewise granted? More particularly, with respect to his ignorance of, and being deceived in, our Title to the Three Lower Counties.
How is it possible, after what is before observed, that he should be ignorant of that? Do the Articles recite any other Title than what we had?
Nay, do they recite any other than what is mentioned in the Attorney and Solicitor-General's Report of 1717. to which he had been a Party in 1717, (15 Years before these Articles.)
But what has he to do with our Title to the Lower Counties?
If after this dear Purchase from him, of his Pretensions thereto, we should still have a defective Title, the greater is our Misfortune, but it does not relate to him in the least.
For he conveys the Lower Counties to us, not we to him.
And, if this Conveyance, also, won't make us a complete Title, still, it is but Equity that we should have from him what we have thus dearly bought, and given him such a Consideration for.
But after all, does he, or does he not, mean that he was deceived in our Title?
For, according to Custom, he has sworn both Ways in his Answer, and indeed twice over, each of the several Ways.
Therefore, are we to believe him, in *Fol. 65.* where he absolutely denies that he knows or believes, or ever heard that we, or any under whom we claim, ever could make him any legal Right or Title to any Part of the Three Lower Counties, or that he ever could derive any Title from us; we, or those under whom we claim, never having had any Right or Title to any part of the three Lower Counties to his Knowledge or Belief.
Or, are we to believe him, in *Fol. 206.* where he swears he always lookt upon every Part of the three Lower Counties to be of Right belonging to his Province; and never acknowledged or believed the Plaintiffs had any Right or Title thereto whatsoever.
Or, are we to believe him, in *fol. 234.* where he apprehends and believes it now plainly appears that the Plaintiffs, by the Agreement, endeavoured to impose upon, and deceive him in manner aftermentioned, and by pretending to give him what was not theirs to give, and which they had no Right or Title to, being comprised within the Charter of Maryland.
Or, are we to believe him, in *fo. 451.* where he, in concluding the Prayer of his Answer as I may call it, winds up thus, That as he was imposed on in the Agreement, both with regard to the Situation of Cape Hinlopen, as likewise with regard to the Plaintiffs pretended Titles to the said Counties, The Defendant at the time of entering into the Agreement being induced to believe that the Plaintiffs could have made him a good Title to such Parts of the three lower Counties as might have fallen to his Share, but which he has, since, by Papers which have been transmitted to him from America, and otherwise, been plainly convinced they could not, therefore, hopes the Plaintiffs shall not have any Relief.
He that never so much as heard we had any Right to the Lower Counties,
He that always believed they were his own Right, and never believed we had any Right or Title whatsoever.
Could not, at any one time, be induced to believe we had a Title.
Under this Head I would only add, that the Defendant at *fo. 222.* says that he did not intend, by drawing the Lines upon his own Plan, to exclude from himself, or to include to the Plaintiffs, any thing, but what he then apprehended the Plaintiffs had good right to, either in Law or Equity; Whereas he is, since, convinced the Plaintiffs had no such right to the Three Lower Counties.
Now we, on the contrary, say, that he then insisted that he himself, not we, had a right to them, and yet, as such, did most clearly exclude them from himself, and include them to us.
And we'll prove that Fact, under his own Hand, by his own Proposals. For, therein, after that he had provided for drawing Lines to exclude the three lower Counties from himself to us, He immediately adds, in *Artic. 4.* these Words of his own Hand-writing: "The Lord Baltimore to quit all Pretensions to the three lower Counties, known to be at present comprised within the Limits aforesaid, that is to say, within the 12 Miles Circle of Newcastle and the North and South Line drawn as aforesaid on the West, and the Bay of Delaware on the East."
- Old Cape Henlopen.**
- The great Instance of Deceit and Imposition, which the Defendant insists is put upon him, is, by the placing or describing, in his own Map, Cape Hinlopen too far South, down to the Sea, below Cape Cornelius; For that, as he says, there is no such a thing as a Cape there, but the true Cape Henlopen, anciently and originally so called by the Dutch, and so described in their Maps, was at the Place we call Cape Cornelius, at the very Mouth of Delaware Bay, and, there, it was that the South Bounds of the lower Counties should have been.
Surely, the Defendant, if this Pretence had been true, might have found some one single ancient Map, that would have given a Colour to it. But he has not proved any one.
His own Witnesses (and his own Examinations of them) happen to say that Cape Hinlopen anciently was, exactly where his Map places it, and that, not only that particular Place was called Cape Hinlopen, but all the Country, round about it, was called Hinlopen too.
But the Matter does not at all rest here.
For, as his Pretence necessarily infers that the Dutch Settlement, or the lower Counties, did not extend Southwards, below the very Mouth of the Cape; if so, they could not have an Inch of Land to the Sea.
Wherefore I shall now give you an Extract, from many Scores of Parts of the Old written Evidence, which absolutely falsify his Pretence, and shew, that there was a Place called Cape Hinlopen, exactly where his Map placed it; that the Dutch anciently called it so, and so described it in their Maps; That they purchased thither, and they, and the Duke of York, and Mr. Penn, and their Tenants, from time to time, settled thither precisely.
The very first Record we have from America, is, Mr. Godyn's Purchase from the Indians, ratified by the Indians before the Dutch Director and Council at New Netherlands; whereby the Dutch purchased the Lands from the Indian Inhabitants on the South Corner of the Bay of the South River, situate on the South Side of the said Bay called by the Dutch the Bay of the South River, stretching in Length, from Cape Hinlopen, to the Mouth of the said South River, about 8 large Miles.
No, no, says Lord Baltimore, Cape Hinlopen and the Mouth of the Bay called the South River, were anciently the same identical Spot.
But if the Original Natives knew, or the Dutch Purchasers knew, they say, and that two or three Years before ever my Lord Baltimore's Grant was made, that they were 8 Leagues asunder.
The Dutch Possessions there had been all held, at first, for their Dutch West-India Company, but now, one particular Part of such their Possessions was transferred to the Use of the City of Amsterdam, and by the Conveyance of this Date, made by the Director and Council of the New Netherlands, unto Peter Alricks, Director and Commissary under the City of Amsterdam over their Colony in the South River, They transfer to him the Fortrefs Casimir, and expressly mention that it was then called New Amstel.
Wherein Fort Casimir is still called Fort Casimir in that Map; Ergo, the City of Amsterdam had not bought it, nor had not called it New Amsterdam, when this Map was made; and that fixes this Map to have been precedent to 1657. And this ancient Map lays down Cape Cornelius at the Mouth of the Bay, and Cape Hinlopen down to the Sea, as another distinct Cape, a great way South of it.
Governor Andros appointed a Jurisdiction of Scout and Commissaries at a Place called the Whorekills (which was ever after continued); Therefore that must be a District or County of some Extent, and we shall by and by see the vast Extent of that District.
Ogilby, King Charles the Second's Geographical Printer, prints his America, and amongst other Maps therein contained, one of New Belgia now called New York, Here he lays down the Bay of Delaware, Cape Cornelius for the Western Cape that formed the Mouth of that Bay, and, below that Cape, Southwards, to the Sea, another distinct Cape, viz. Cape Hinlopen.
The Dutch, with a Squadron of Ships, retook the New Netherlands, and the Officers of that Squadron thereupon appointed Anthony Colve, to be Governor General of that New Conquest; and how do they describe the Bounds of it? Why thus, New Netherlands with its Appendencies and Dependencies, beginning from Cape Hinlopen, or South Side, of the South or Delaware Bay, and 15 Miles more Southwardly, (with the said Bay and South River included) as the same, in former times, by the City of Amsterdam, and afterwards, by the English Government, in the Name and under the Duke of York, was possess; and further, from the said Cape Hinlopen, along the Main Ocean, to the East End of Long Island, &c.
The Dutch General, Governor Colve, immediately after, appoints Peter Alrick, to be Commander and Sheriff in the South River of New Netherland, last called Delaware; and how does he describe that particular subordinate Part of his Government? Why thus, beginning from Cape Hinlopen, and as much more Southwardly as the same heretofore, in the time of the former Dutch Government was possessed and enjoyed, to the Head of the said River.
That Dutch Possession was very short, for it was yielded again, by Treaty, in the February following to England (indeed in Exchange for Surinam). And then New York, with its Appurtenances, was again granted to the Duke of York, who appointed Colonel Andros for his Lieutenant Governor there.
Governor Andros, at New York, grants 600 Acres to William Roods, at the Whorekill on the West Side of Delaware Bay, called Rehobah, lying upon Rehobah Bay, and bounded by other Land granted to John Avery. — Note, Rehobah Bay the nearest Part of it is 5 or 6 Miles South below the Whorekill Town.
The same Governor makes two other Grants, one of 196 Acres, to Edward Southeran, West from the Whorekill; the other of 304 Acres, to William Arundel, on the West Side of Delaware Bay, about three Miles South West from the Whorekills, in the Woods.
He also grants 300 Acres to Edward Bodell, in the Woods, South South East from the Whorekills about 3 Miles.
He also grants 900 Acres, on Slaughter Creek, to Randal Revel, said to be near to the Whorekill, (yet Slaughter Creek is 5 Miles North of the Whorekill Town)
400 Acres in the Woods, to William Prentiss, 5 Miles South West from the Whorekill Town.
300 Acres in the Woods, to William True, 5 Miles Distance South West from the Whorekill.
800 Acres in the Woods, to John Kirk, South West from the Whorekill Town, about 5 Miles, and to a Branch proceeding from Rehobah Bay.
400 Acres, to John Johnson, on Rehobah Bay, upon Loues's Creek.
800 Acres, to Robert Brassey, in the Woods, near Rehobah Bay.
300 Acres, to Robert Brassey Jun. upon Rehobah Bay, Distance from the Whorekills about 10 Miles, bounded by Richard Brassey.
300 Acres to Richard Brassey.
1000 Acres to William Burton, on the South Side of Rehobah Bay, and on the North Side of the great River.
1678. Aug. 14. The Court at Whorekills, having Power to grant out Lands within their Jurisdiction, that Court, by Warrant, laid out, and Governor Andros at New York granted,
1000 Acres, to Francis Whitwell, on the North Side of the Southernmost Branch of Duck Creek.
These shew, what a very large District the Whorekills District was; For this last Grant, is 35 Miles more North than the Whorekill Town. And some of the above Grants are also 10 Miles South from the Whorekill Town. So that the above Grants prove two Things.
1. That the Whorekills was a County or large District.
2. That Lands were granted out, so early as before 1678, by the Duke of York's Governors, very far South of, and below the Whorekill Town, and our Cape Cornelius, viz. 10 Miles below it, down to the great River. (And that great River was Indian River, Vide the Map for Rehobah Bay, and for Indian River, far below Cape Cornelius.)
Oct. 11. The Secretary's Letter from New York, containing the Governor's Order about a Tract of 680 Acres laid out for one Walker, in May 1677, upon the South Westernmost Creek of Rehobah Bay.
1679. Aug. 20. Governor Andros's Grants for 600 Acres unto Meggs and Colley, lying in the Woods near unto Rehobah Bay distant from the Whorekill about 10 Miles.
Also for 400 Acres unto John Okey, being upon Rehobah Bay distant about 8 Miles South from the Whorekills.
Also for 900 Acres to Hignett and Crue, near unto Rehobah Bay, about 4 Miles to the South of it, that is 4 Miles to the South of Rehobah Bay.
1682. Aug. 24. The Duke of York's Feoffment to Mr. Penn for the lowest or South Tract, grants all that Tract of Land upon Delaware River and Bay, beginning 12 Miles South from the Town of Newcastle, otherwise Delaware, and extending South, to the Whorekills, otherwise Cap in Lopen; and the Soil Fields, &c. belonging to the Limits aforesaid.
Oct. 27. Was the Day Mr. Penn arrived in America.
28. Livery and Seisin was given to him of the Lower Counties.

1682. Oct. 29. Being the very next Day after, and being the second Day after he arrived in America, he sends his Summons to the Justices of the *Whorekill County, alias Deal County*, to meet him the next Thursday, in order to hold a General Court for settling the Jurisdiction of their Parts; and, in his Summons, tells them the Duke has granted him from 12 Miles South of *Newcastle* down to *Cape Henlopen*.
- Dec. 6. He had then been but bare 40 Days in America, and that, up at *Uplands*; and then, his whole Country, (*Pennsylvania* and the Lower Counties also) joined in one Assembly together, held at *Uplands*, and past an Act, to unite the Lower Counties unto *Pennsylvania* as of the proper Territory thereof. And, in that Act, it's recited that the Duke of York had granted to him (in all) from 12 Miles Northwards of *Newcastle*, down to the South Cape, commonly called *Cape Henlopen*, but, by the Proprietor and Governor, now called, *Cape James*.
25. Proprietor Penn issued his Commission to 7 Justices of the Peace in the Jurisdiction of the County of the *Whorekills*, which from henceforth (says he) shall be called by the Name of *Suffex*; and the Extent thereof shall be, from the main Branch of *Maspilion Creek* called the Three Runs Northwards, and Southwards to *Affawamont Inlett*, reputed and accounted *Cape Henlopen*, which said *Cape Henlopen*, I will, from henceforward, have called by the Name of *Cape James*.
26. Proprietor Penn issued his Warrant to the Justices of *Suffex County*, that, before any Land was surveyed for any other Person, they should issue a Warrant to the Surveyor, to lay out, for the Duke of York, 10,000 Acres for a Manor; and other 10,000 Acres, for a Manor for himself; and he would have the Duke's Manor lie, on the North Side of *Affawamont Inlett*, as near to *Cape James* as might be.
- Mar. 22. The Duke of York actually obtained a Grant from the Crown of the Town of *Newcastle* and the Lands within the Compass or Circle of 12 Miles about it, and the Tract beginning 12 Miles South from the Town, and extending South to *Cape Lopin*.
1683. April 13. Which Grant, under the Great Seal, we have; thereby to shew that the Duke obtained it for Mr. Penn, in pursuance of his Covenant for further Assurance.
1683. July 26. A further Grant did put the Great Seal (or was very near to doing so) from King Charles to the Duke of York, of the Town of *Newcastle*, of the River *Delaware* and all Islands therein, of the Tract of Land upon the West Side of the River *Delaware*, from *Skunkill Creek* unto *Bombey's Hook*, and from *Bombey's Hook* unto *Cape Henlopen*, now called *Cape James*, being the South Point of a Sea Warmett Inlett, being formerly the Claim or Possession of the Dutch, or purchased by them of the Natives, &c.
1684. June 1. The Deputy Surveyor J. Barkhead's Return, by Order of William Clark, that he had surveyed and laid out a Tract of 10,000 Acres of Land, for the Duke of York, on the North Side of *Affawamont River and Inletts*, in the County of *Suffex* near the Mouth of the said Inlett.
1684. June 1. The Chief Surveyor William Clark, also backs and signs that Return, and makes an additional Return of his own.
1683. Oct. 28. And there is a Draught or Map of those 10,000 Acres.
1684. June 1. The Deputy Surveyor's Return that he had laid out for Mr. Penn 4790 Acres, for a Manor, in the County of *Suffex*, on the South Side of *Rehobath Bay*.
1684. April 18. 1684. June 1. The Chief Surveyor's Return back thereon.
1684. April 18. And a Draught or Map of those 4790 Acres.
1684. April 18. The Deputy Surveyor's Return that he had, by virtue of Mr. Penn's Order to the Chief Surveyor, laid out for *Depree and Barker* 645 Acres, called *Fairfields*, on the South Side of the *Indian River* in the County of *Suffex*.
1684. April 18. 1684. July 10. The Chief Surveyor's Return thereon.
1684. April 18. And a Draught or Map of those 645 Acres.
1684. April 18. The Deputy Surveyor's Return that he had, by like Order, laid out for *John Oakley* 800 Acres, called *Mulatto Hall*, on the South Side of *Indian River* in the County of *Suffex*.
1684. July 10. The Chief Surveyor's Return thereon.
1684. April 19. And a Draught or Map of those 800 Acres.
1684. April 19. The Deputy Surveyor's Return that he had laid out for *John Croper*, 1000 Acres, called *The Lady's Delight*, on the South Side of *Indian River*, in the County of *Suffex*.
1684. July 10. The Chief Surveyor's Return thereon.
1684. July 10. And a Draught or Map of those 1000 Acres.
1684. May 12. 1684. Nov. 2. A Grant of those Lands from Mr. Penn's Land-Commissioners to *Croper*.
1684. May 12. The Deputy Surveyor's like Return that he had laid out, for *John Vines*, 500 Acres, called *Barkin*, on the South Side of the *Indian River*, in the County of *Suffex*.
1684. July 10. The Chief Surveyor's Return thereon.
1684. May 12. And a Draught or Map of those 500 Acres.
1684. May 12. The Deputy Surveyor's Return that he had laid out, for *John Kypshaven*, 500 Acres, called *Nonfuch*, on the South Side of the *Indian River*, in the County of *Suffex*.
1684. Feb. 1. The Chief Surveyor's Return thereon.
1683. Feb. 13. At *Suffex County Court* the *Indian Affawamack Harmatamale*, acknowledged in Court, his Sale to *Alexander Molistone* of 1000 Acres on the South-side of the *Indian River*.
1684. May 13. The Deputy Surveyor's Return that he had laid out for *Alexander Molistone* 1000 Acres, called *Cattle's Delight*, on the South-side of the *Indian River*, in the County of *Suffex*.
1684. July 10. The Chief Surveyor's Return thereon.
1684. July 10. And a Draft or Map of those 1000 Acres.
- Now please to turn to our Map, proved in the Cause.
- Every one of these 8 Tracts are far below *Cape Cornelius*.
- Every one of these 8 Tracts go down South, below *Indian River*, and the Duke of York's Manor extends precisely to our *Cape Hinlopen*.
- Every one of them, therefore, do not bound Eastwards to the Bay of *Delaware*, but to the Ocean.
1685. October 17. After many Hearings before the Privy Council, between Lord Baltimore and Mr. Penn, the Lords of the Council, this Day, declare the Tract of Land then in Dispute did not belong to my Lord Baltimore, but it remained doubtful what were the true Bounds of the Land called *Delaware*?
- October 31. The Lords heard them, again, and considered what might be the proper Boundaries of the Country of *Delaware*, and then, only proposed that the whole Peninsula or Tract of Land called *Delaware*, from East to West, as far as *Cape Hinlopen* southward, should be divided into two equal Parts. — My Lord Baltimore desired further Time to consider of this Proposal — The Committee allow him a Week longer, to offer his Objections.
- November 7. My Lord Baltimore and Mr. Penn again attended, and were heard, expressly concerning the Boundaries of the Country of *Delaware*. And the Lords resolve to report that, for avoiding further Differences, the Tract of Land lying, between the River and Bay of *Delaware*, and the Eastern Sea, on the one side, and *Chesapeake Bay* on the other, be divided into two equal Parts — by a Line, from the Latitude of *Cape Hinlopen*, to the 40th Degree.
- November 13. The final Order in Council, made this Day, also contains a very strong Declaration that the Tract of Land then in Dispute had been inhabited and planted by Christians, at and before the Date of the Lord Baltimore's Patent, as it had been, ever since, to that Day, and continued as a distinct Colony from that of *Maryland*, and then repeats and confirms the foregoing Report and Determination, and orders the Line of Division to begin, from the Latitude of *Cape Hinlopen*, and to go to the 40th Degree, and, twice over, mentions the Eastern Sea as the Boundary of Part of it.
- Must not that Person be very much hardned, who can now say, that *Henlopen* did not lie in the Sea, but lay at *Cape Cornelius*, and at the Mouth of the Bay?
- Was there, ever, so express, and so very strong, a Proof to the contrary?
- I would only add that, in 1708, Lord Baltimore petitioned to set aside that Order of 1685, but his Petition was dismissed.
- He again in 1709, petitioned against it, and, upon a full Hearing, before the Queen, personally, assisted (*inter alia*) by the Lord Chancellor, both the Chief Justices Holt and Trevor, and the Master of the Rolls, not only that second Petition was also dismissed, but the Order of 1685 was confirmed in all its Points, and ordered to be forthwith carried into Execution.
- And in July 1731, he petitioned the Crown, and mentioned that there were such Orders of 1685 and 1708, and prayed the Crown to order Mr. Penns to join with him in making the Division.
- And by that means he forced us into the present Agreement, upon his own Terms, and to give him Lands up very high for his (General) North Bounds.
- And, yet, now says that *Cape Henlopen* did not lay south of *Cape Cornelius*, but it lay quite at the Mouth of *Delaware Bay*.
- Our written Evidence contains more Evidence yet, For
1685. December 10. At *Suffex County Court* the *Indian Sebachmaker* at *Affawamant* acknowledged another Sale, to *Norton Claypole*, for 1000 Acres called *Indian Grove*, on the South-side of the *Indian River*, and another Sale to *Matthew Taylor* for 500 Acres, on the North-side of *Indian River*.
1686. Sept. 14. 16. Sales recorded in *Suffex County*, from the before-named *John Oakley* of one Moiety of *Mulatto Hall*, containing 800 Acres, on the South-side of *Indian River*, unto *John Barker* in Consideration of 30 l.
1692. November 10. Another Sale recorded in *Suffex County Court* from *John Barker* unto *Peter Waples* of the County of *Somerset* in *Maryland*, but now of the aforesaid County of *Suffex*, Planter, of 300 Acres of Land on the South-side of *Indian River* in the County of *Suffex*, at the Head of a Neck called *Pine-Neck*, which had been granted by Mr. Penn's Commissioners on 19th September 1691. This Sale made in Consideration of 4500 Pounds of Tobacco.
1693. September 5. Another Sale recorded in *Suffex Records*, whereby *William Clark* of the County of *Suffex*, for the Sum of 4300 Pounds of Tobacco, sells to *Peter Waples* of the same County a Tract of 400 Acres, which had been granted to *Clark* by Mr. Penn's Commissioners on 7th September 1691, on the South-side of *Indian River* in the County of *Suffex*.
1694. March 6. The Government of *Maryland* took up *John Barker* and *Charles Tindall*, Inhabitants on the South-side of *Indian River*, to oblige them to submit to the *Maryland Government*.
- The Justices of *Suffex County Court* expostulated with the Magistrates of *Maryland* thereon; and told them that those Persons Lands had been taken up, first, under the Duke of York, and again, since, under Mr. Penn, and that those People had, always, paid their Quit-Rents to Mr. Penn. — The Magistrates of *Maryland* (who have a great Facility either in making, or in altering, Orders of the King in Council to serve their Turns) insisted upon the Order of 1685, to justify them, and said that Order was to divide Lands, such as were situate between *Delaware Bay* and River only on the one side, and *Chesapeake Bay* on the other. — But the Justices of *Suffex County* then, at that time, in their Letter, as fully and as clearly confuted that false Pretence, and in as apt Words, as we can possibly do now at this Minute. And their Letter to the Magistrates in *Maryland*, at fol. 61. of your Brief, is extremely well worth your reading on this particular Occasion.
- They, in that Letter, took notice, also, of the Names of *Cape Henlopen*, and *Cape Inlopen*, very significantly and to the purpose. So pray turn to it.
1702. If modern Maps are to be left in, the most authentick ones must be such as are foreign Maps, and then we have a Swedish Book and Map of this Year, containing an Account of *New Sweden*, now *Pennsylvania*, which lays down both Capes, *Cape Cornelius* at the Mouth of the Bay, *Cape Hinlopen* down to the Sea, a great deal south of the other.
1731. June 3. My Lord Baltimore's own written Map, annex to the Articles, lays them down both so.
1731. June 3. The Plaintiffs written Map, then used, lays them down both so; and that Map we have produced and proved.
1731. July 1. My Lord Baltimore's Petition, to force us to execute the Order of 1685, must refer to that Order of 1685.
1731. July 22. My Lord's own written Notes for the Agreement, says, the Division-Line shall in effect an East and West Line to be drawn from *Cape Hinlopen*.
1731. August 16. The Draft of the Articles says in the 3d Article, that the East and West Line shall begin (to run across the Peninsula) at the Place in the said Draft or Map called *Cape Hinlopen*, which lies South of *Cape Cornelius*, upon the Eastern Side of the said Peninsula, towards the main Ocean.
1732. May 10. After a very long Consideration, the said Articles were solemnly sealed by the Parties.
- And we now pray they may be carried into Execution.
2. Besides all this written Evidence (which will not lie) an infinite Number of our Witnesses, and a great Number of the Defendant's Witnesses too, all prove that *Cape Hinlopen* did lay there.
- And I must finish with the Words of the Examination by the Defendant of one of our Witnesses from *Maryland*, viz.
- John Teagne* of *Maryland*, Planter, aged 85. Does not know *Cape May*, but has known the *Whorekills*, and the Land from *Phenix's Island* to the *Whorekills Town*, for above 50 Years; and that the said Land has been called by the Name of *Inlope* for the said time.

As to the Circle round *Newcastle* and the Dimensions of it.

I'll first precisely state the Difference between us.

We say the Circle is to be 12 Miles distant from the Town.

He says he meant, and it ought to be, a Circle, which, when you measure all round the Periphery of it, will make a Ring of 12 Miles, but will be less than two Miles distant from the Town.

Now we'll discuss that.

1680. March 4. King Charles, in his Letters Patent to Mr. Penn for *Pennsylvania*, expressly says that our Southern Boundary shall be by a Circle drawn at 12 Miles Distance from *Newcastle* Northwards and Westwards unto the Beginning of the 40th Degree, and then by a straight Line.

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- This cuts off a Corner from *Pennsylvania*, which, otherwise, had been an oblong Square of 5 Degrees by 3 Degrees exactly.
1682. August 24. The Duke of York's Feoffment to Mr. Penn, of *Newcastle*, grants all that the Town of *Newcastle*, otherwise *Delaware*, and all that Tract of Land lying within the Compass or Circle of 12 Miles about the same.
- To hold the said Town, and Circle of 12 Miles of Land.
- And covenants to make further Assurance of the Town and Circle of 12 Miles of Land.
- And appoints *John Moll Esq;* to make Livery.
1682. August 24. The other Feoffment, of the self-same Date, conveys to Mr. Penn the Southern Tract, and describes it to begin 12 Miles South from the Town of *Newcastle*:
Now take these three Grants together, (all which are recited in the present Articles) The first excludes all the Lands to 12 Miles North of the Town. The last excludes all the Lands to 12 Miles South of the Town. And what Circle or Distance could the middle Grant mean, which was made by the same Person, and on the same Day, as the last Grant was made?
- What Circle did all People, then, at the Time, think was granted by the Feoffment for *Newcastle*?
1682. Nov. 21. Mr. Moll, who gave the Possession to Mr. Penn, and who was the best Mathematician they ever knew in that Part of *America*, he puts upon the Records an Entry that he was the first Person left there in Commission by Sir *Edmund Andros*, and that Mr. Penn came and demanded Seisin of him; and, says Mr. Moll, Mr. Penn produced two Feoffments, the one for the County of *Newcastle*, with 12 Miles Distance, North and South, thereunto belonging.
- So we have his Sense of the Circle plainly.
- But he does not stop here; He gives an account of Delivery of Seisin merely of the Fort and Town of *Newcastle*. And then (says he) we went down, to give Seisin also, of the lowest Tract, under the other Feoffment, and did so. And pray where did they go, to give Seisin of that lowest Tract?
- He tells us expressly, 'I hat, " few Days after that, we went, to the House of Captain *Edmund Cantwell*, at the South-side of *Apoquimining Creek*, by Computation above 12 Miles Distance from the Town of *Newcastle*, as being Part of the two Lower Counties mentioned in the Duke's other Feoffment, and we made there the same Form and Delivery " as we had done at *Newcastle*."
1682. December 6. The Act of Union of the Lower Counties to the Province of *Pennsylvania*, recites that the Duke had granted to Mr. Penn all that Tract from 12 Miles Northward of *Newcastle*, down to the South Cape called *Cape Henlopen*.
- These are cotemporary Expositions.
1731. July 22. Lord *Baltimore* delivered over his own Terms and Proposals, in Writing.
- (1.) By the first Article of all, he himself writes, there shall be a Circle of 12 Miles Distance drawn from *Newcastle*.
- [No, says he now, I meant a Circle whose Periphery, when measured all round would measure to 12 Miles] But alack-a-day, that would not be 12 Miles, nor 2 Miles, distant from *Newcastle*.
- (2.) By the 3d Article of his own Proposals he directs that a Line, which is there mentioned, shall intercut the Periphery of the Circle of 12 Miles from *Newcastle*.
- This happens to be very fatal to him: For here, tho' he mentions a Periphery, yet he says, most explicitly, that the Periphery, so to be intercut, shall be the Circle of 12 Miles from *Newcastle*.
- (3.) *Paris* swears that, during the whole Treaty, my Lord himself, and all the Parties, often spoke of this Circle, and all of them constantly mentioned it as at 12 Miles Distance from the Town, and at no other. And that my Lord took a Scale, from the Circle laid down upon his Map, as for 12 Miles, in order, by a proper Addition of more to it, to find where the other Measure, of 15 Miles South from *Philadelphia*, would fall, and to draw a Line, for that other Distance, in a proper Place, by that Help.
- And I humbly think my Lord's own Proposal abundantly confirms his Testimony.
- Paris* also swears that the Circle, upon my Lord's Map, extended West to touch *Elk River*.
- If you look upon our proved Map, 12 Geometrical Miles will do so, but 12 Statute Miles are short of that.
- August 16. (4.) The Draft of the Articles (as at first delivered over) contains, that there shall be the said Circle mentioned in the said Charter for *Pennsylvania*, and Deed of Bargain and Sale or Feoffment of *Newcastle* (or so much thereof as is requisite) drawn and markt out at the 12 Miles Distance from the Town of *Newcastle*.
- November 8. Upon the same Sheet of the Draft, when returned, Mr. *Sharpe* had writ
- January 5. The Miles throughout to be express English Statute Miles.
- That Amendment was, with Difficulty, agreed to; and then, the Words are added " which 12 Miles shall be 12 English Statute Miles."
- Now this was an After-thought, whereby the Defendant got something, some small Matter, viz. about 2 Mile upon us, the Length of the Peninsula.
- For 12 Geometrical Miles Distance from the Town of *Newcastle* is, within a mere Trifle, 14 Statute Miles distant from the Town.
- But says my Lord, by this After-thought, call those 12 Miles expressly by the Name of Statute Miles.
- Well do so; but, still, it will be 12, of some Miles or other, distant from the Town.
- Did he then mean that it should be a Circle whose Periphery when measured all round, would measure to the Extent of 12 Statute Miles?
- If he did, as this Matter was immediately then under his Consideration, was that a proper Amendment, which he or his Solicitor proposed?
- Why his Amendment left the Circle still distant 12 Miles from the Town (as his own Proposals had proposed) tho' they were now reduced to be Statute Miles only, and not geometrical Miles,
- And his Amendment, if he had then meant what he now pretends, must have been a very different one. It should have been this, You must say less than two Statute Miles distant from the Town.
- Whereas, on the contrary, his Amendment still agrees it shall be full 12 Miles distant from the Town, but that they should only be twelve such Miles as were Statute Miles.
- And if he had had then the Measure all around the Periphery in his Contemplation, his Amendment, which he contended for, was for a very small and trifling Amendment in his own favour; for the Semi-diameter of a Periphery of 12 Statute Miles, is very minutely less than the Semi-diameter of a Periphery of 14 Statute Miles would be.
- But the Semi-diameter of a Periphery of 12 Statute Miles, and 12 Miles Distance from the Town, are Things so extremely disproportionate, each to the other, (the one being less than 2 Miles, the other full 12 Miles,) that this could never have once entered into his Head, then, under that Amendment.
- But it is the Production of some of his cunning Men, since, in *Maryland*.
- (5.) After this Amendment (such as it really was) was agreed to, he desired that the Draft should be laid before his Mathematician, for the Purpose, as he himself swears, to consider of the Propriety and Fitness of the Terms in the Agreement.
- He admits his Mathematician did give his Opinion upon the same in Writing.
- We have proved our Duplicate of that Opinion: my Lord sinks his Copy of that, as he does every thing that he can.
- And what says Mr. *Senex* of this Circle?
- Why he says, most explicitly,
- That a Circle is to be drawn round *Newcastle*,
- That *Newcastle* is to be as a Center,
- And that the Circle is to be at the Distance of 12 English Statute Miles.
- (6.) But there is another Point which answers him. He fancies that the Feoffment of *Newcastle* is express the least clearly of all the three grand Deeds, and, therefore, he desires to sling out of the Case his own Agreement, so solemnly settled; to sling out, also, the Consideration of the Feoffment of the lowest Tract, (tho' that's recited in the Agreement, and helps to compleat the Description of part of the Circle) to sling out, also, the Consideration of the Grant of *Pennsylvania*; (altho' that is not only recited in the Agreement, and makes a Description of part of the Circle, but is also expressly mentioned in the very second Article of the Agreement, which consists in the whole but of two Lines. For, the Article is, that the Circle, mentioned in the Grant of *Pennsylvania*, and Feoffment for *Newcastle*, shall be drawn so and so) and he desires to take into Consideration, no earthly Thing but the Feoffment for *Newcastle* itself.
- Be it so, will that help him? I fancy not.
- For that Feoffment expressly says, in two several Places, that Mr. Penn was to have 12 Miles of Land.
- Now I defy all the Conjurors on Earth, to put 12 Miles of Land into a Periphery, that is but 12 Miles, when measured all round.
- It is absolutely impossible to be done, even if we had a whole Circle of Land.
- But, besides that, it happens, a little unfortunately for him, that *Newcastle* is upon the Side of the great River *Delaware*, and we have not above half a Circle of Land.
- So that a Circle, of his present Imagination, will not contain the half of 12 Miles of Land.
- Ergo. That cannot be the Circle which this single Feoffment could, by any Possibility whatever, intend.
- (7.) Lastly, The Articles, so solemnly, and with so much length of Time, Deliberation, and Consultation, prepared, perused, settled, and executed, says that the Circle shall be drawn and markt out at the 12 Miles Distance from the Town of *Newcastle*.
- And, accordingly, we pray it may be decreed to be run out.
- Mr. Penn's Title, to *Pennsylvania*, and the Lower Counties also, as contained among the Rest of the Written Evidence.**
1663. March 12. Grant to the Duke of York of *New York*, and all Lands, &c. appurtenant thereto.
1664. Aug. 27. Conquest from, and surrender by, the Dutch of *New York*.
- Oct. 1. Conquest from, and surrender by, the Dutch of *Delaware*.
- ¶ The constant Possession and Government; and Acts of Propriety, done by the Duke of York, by his Governors Colonel *Nicolls*, and Colonel *Lovelace*, from 1663, to 1673.
1667. July 21. Treaty of *Breda*, whereby the English Possession was confirmed by Treaty.
1673. Feb. 7. Peace between *England* and *Holland*, restoring what taken by each other, during the then late War.
1674. June 29. New Grant to the Duke of York, of *New York*, and of all Lands, &c. appertaining thereto.
- July 1. The Duke of York appoints *Edmund Andros* Governor.
- Oct. 31. He receives *New York* from the Dutch.
- Novemb. 2. Continues the Officers there, and also at *Delaware*, by his own Order.
3. } Several of Governor *Andros*'s Commissions and Orders about *Delaware*.
4. } ¶ The constant Possession, Government, and Acts of Propriety, done by the Duke of York, by his Governor Colonel *Andros*, and his Deputy Captain *Brockbolts*, throughout the Lower Counties, from 1674, to 1682.
1680. July 10. An Indian Purchase made by *John Moll*.
- ¶ And an Assignment thereof by *Moll* to Mr. Penn, on 21 February 1682.
- Grant to Mr. Penn of the Province of *Pennsylvania*.
1682. March 4. Release of *Pennsylvania*, from the Duke of York to Mr. Penn.
- Aug. 21. Indenture of Feoffment, from Duke of York to Mr. Penn, of *Newcastle*, and 12 Miles about it, with Power to make Livery, and Covenant for further Assurance.
- Aug. 24. Other Indenture of Feoffment, from Duke of York to Mr. Penn, of the South Tract, with like Power, and like Covenant.
- Same Day. Entry in the Records, that Mr. Penn this Day took Possession of both those Tracts.
- Oct. 27. & 28. Another Entry therein, that Livery and Seisin were then given to him, by *Moll* and *Herman*, the Duke's Attorneys.
- Oct. 28. ¶ The Deposition of the Person who saw it given then.
- Another Entry thereof upon the Records, more fully, under the Date of 21 November.
- Oct. 28. The Attornment of the principal Tenants.
- Novemb. 21. Captain *Brockbolts* and Council, their Proclamation, at *New York*, to discharge all the Magistrates, at the several Parts in *Delaware*, from any further Service to the Duke, and ordering them to yield Obedience to the Powers granted to Mr. Penn.
- Decemb. 18. Captain *Brockbolts*'s Letter to Sir *John Werden*, that Mr. Penn was posselt of what was granted him; and that what was now left, of the Duke's Province, would not defray the Charge.
- ¶ The Proof of Mr. Penn, and his Families, constant possessing and governing, from 1682, and granting out Lands, to this Hour.
- March 22. A new Grant from the Crown, to the Duke of York of *Newcastle*, and the South Tract, actually past, and under the Great Seal.
1683. Apr. 15. & 16. The Entries of a further Grant, from the Crown, to the Duke of York, of the same, in a more extensive Manner; and a Certificate, that it did pass the Great Seal, (but it's not enrolled.)
1685. Novemb. 13. Order in Council, declaring that the Land intended to be granted to Lord *Baltimore*, was only Land uncultivated, and inhabited by Savages, but that the Lower Counties were inhabited, and planted by Christians, at and before the Date of his Patent, as it had been ever since, to that time, and continued as a distinct Colony from that of *Maryland*.

It was at first - 14
Reduced to - 12
Now decreases it may be less than 2

Miles distant from the Town.

1691. October 25. Grant under the Great Seal of the Government of *Pensilvania*, and the Territories depending thereon, unto Colonel *Fletcher*, the Governor of *New York*, during the War, on account of Mr. *Penn's* Absence from the Province.
1693. August 20. An immediate Grant and Restoration, of the Government of all the same, to Mr. *Penn*, under the Great Seal.
1696. An Act of Parliament, that all Governors of Plantations should be approved by the King, and should take Oaths to observe Acts of Trade, &c.
1697. April 30. A Commission to several Persons to swear the Governor of *Pensilvania*.
- March 17. *William Markham*, the Governor under Mr. *Penn*, sworn under the same.
1700. September 13. Mr. *Penn's* Indian Purchase of the River *Susquehannab*.
1702. January 21. The Queen's Order approving *Andrew Hamilton Esq*; for Governor, named by Mr. *Penn*.
1703. July 30. Ditto, approving *John Evans Esq*; appointed by Ditto.
1708. July 18. Ditto, approving *Charles Gookin Esq*; appointed by Ditto.
- Oct. 6. & 7. Mr. *Penn's* Mortgage to *Gee, Woods* and Others, for 6600 *l*.
- January 9. ¶ *Gee* and *Woods* on 13 and 14 January 1729, convey one Moiety to *John Penn* in Fee, one Quarter part to *Thomas Penn* in Fee, and the remaining part to *John* and *Thomas Penn* in Fee, in trust for *Richard Penn*, and his Heirs.
27. Lord *Baltimore's* Petition against the Order of 1685, for that it was obtained without hearing him.
1709. May 19. Order in Council dismissing that Petition.
- June 23. His further Petition, expressly repeating that gross Falsity.
1716. December 17. The Queen's Order, upon a Hearing before herself in Council, dismissing that Petition, and confirming the Order of 1685. in all its Points, and ordering it to be put in Execution without any further Delay.
1718. November 14. Order in Council approving Sir *William Keith*, nominated by Mr. *Penn*.
- Probate of Mr. *Penn's* Will, whereby he devised 40,000 Acres to his Descendants by his first Wife. And gave the Residue of his Estate to 12 Trustees, to be disposed of to his second Wife's Children, as she should appoint.
- ¶ Her Deed of Appointment of 18 November 1718. $\frac{3}{4}$ ths to *John Penn*, paying 1500 *l*. to his Sister *Margaret*. and the other $\frac{1}{4}$ to *Thomas* and *Richard* and *Dennis Penn*.
- ¶ Bills, Answers, and Decree in Exchequer, of 4 July 1727. against *Springett Penn*, then the Heir at Law, that the Will was well proved.
- ¶ A Family Deed of 5 July 1727, whereby All the Sons of Mrs. *Penn* agreed, that *John Penn* should hold his Moiety, charged with 1500 *l*. for his Sister *Margaret*, and that *Thomas* and *Richard Penn* should hold their Moiety as Tenants in common. *Dennis* being dead. And that the Trustees in their Father's Will should convey accordingly.
- ¶ By Deed of February 12. 1731. *Margaret Freame* releases 500 *l*. Part of the 1500 *l*.
- ¶ By Indenture of Release of 24 June 1735. The surviving Trustees in Mr. *Penn's* Will convey all his Lands to *John* and *Thomas Penn* in Fee.
1726. April 18. Order in Council, approving *Patrick Gordon* for Governor, nominated by *Springett Penn*, the Heir at Law, and *Hannab Penn*, the Executrix.
1731. September 22 and 23. *William Penn*, then Grandson and Heir at Law of Proprietary *Penn*, releases all his Claim to the said Province and Countys, one Moiety to *John Penn* in Fee, one Quarter Part to *Thomas Penn* in Fee, and the remaining Quarter Part to *John* and *Thomas Penn*, in Trust for *Richard Penn*, and his Heirs.
- September 29. Bargain and Sale enrolled, whereby *John, Thomas* and *Richard Penn* mortgage *Pensilvania* to *William Penn* for 5000 *l*.
- ¶ By Bargain and Sale enrolled of 7 October 1732. *William Penn* transfers his Mortgage to *Alexander Forbes*.
- ¶ By Bargain and Sale enrolled, of 26 March 1737. *Forbes* and *William Penn* convey that Mortgage to *Thomas Jackson*.
- ¶ And, by a Declaration of Trust, of the same Date, *Jackson* declares the Trust, as to a Moiety therein, for the Plaintiff *John Penn*.
- ¶ And, by a Conveyance of 29 January 1740. *Jackson* releases one Moiety to the Plaintiff *John Penn* in Fee, one Quarter to the Plaintiff *Thomas Penn* in Fee, and the remaining Quarter Part to the Plaintiffs *John* and *Thomas Penn* in Fee, in Trust for the Plaintiff *Richard Penn*, and his Heirs.
1732. August 26. An Order of Council, being a strong Precedent that the Crown will not take Advantage of defective Titles in *America*, where Possession and Improvement has been.
1733. August 2. Order in Council approving Major *Patrick Gordon*, re-appointed by the now Plaintiffs *John, Thomas*, and *Richard Penn*, their Mother *Hannab*, and their Nephew *Springett*, who had appointed him, being both dead.
1737. April 21. Lord *Baltimore* petitioned the King not to approve Colonel *Thomas* for a new Governor, whom Mr. *Penns* had nominated, pending this Suit; but that, till the Dispute was determined, the Crown would appoint some indifferent Person.
- June 3. Report from the Lords of Trade, that the Family had appointed, and they would not advise any Alteration.
- July 21. My Lord's further Petition, praying earnestly to be heard against that Report, for that the Plaintiffs appointing a Governor, now, would be insisted on as an Evidence of their Right.
- February 4. A Report that, when the Lords had appointed to hear that Petition of his, he prayed Leave to withdraw it.
6. Order in Council allowing him to withdraw it.
15. Order in Council approving Colonel *Thomas*, the present Governor, appointed by the now Plaintiffs.
1742. May 28. *Letitia Aubrey*, a Daughter of *William Penn Esq*; who had 10,000 Acres under his Will, released all Claims under the said Will to the Plaintiffs, who had long before given her those Lands, and she had sold them; and this Release was executed two or three Days before she was examined in the Cause, and is proved in the Cause, in order to make her a good Witness.

An Account of the several Indian Purchases mentioned in the Written Evidence.

1629. June 15. Sale from the Indians to the Honourable Mr. *Samuel Godyn*, of the Lands on the South Side of the South Bay, called the Bay of the South River, stretching in Length from Cape *Henloop* to the Mouth of the said South River, about eight large Miles.
- Observe this, the first and earliest Purchase made by the Dutch.
1649. April 15. Sale from the Indians to *Andries Huddie* and other Dutchmen, of Land on the East Side of the South River of *New Netherland*.
1651. July 19. It is mentioned, (in the Transfer which was made to *Peter Alricks* upon 12 April 1657.) that there was an Indian Purchase this Day made, but it no where appears.
1675. September 23. Sale from the Indians to Colonel *Andros*, to the Use of the Duke of *York*, of the Tract of Land on the West Side of *Delaware River*, eight or nine Miles below the Falls, and as far above the Falls, and all the Islands in *Delaware River*.
1678. November 18. Governor *Andros's* Order, reciting, that some of the Land on the West Side of *Delaware River*, below the late Purchase at the Falls, is as yet unpurchased of the Indians, he therefore orders Captain *Cantwell* and *Ephraim Harman* to agree with the Indians for all that Tract, yet unpurchased, between the late Purchase at the Falls, and the former below.
1679. May 4. Sale from the Indians to *Peter Bayard* of *New York*, of all that Tract of Land called *Boompies Hook*, on the West Side of *Delaware River*, and at the Mouth thereof, and stretching down along the said River to *Duck Creek*.—This Deed is witnessed by the above *Ephraim Harman*.
1680. July 10. Sale from the Indians to *John Moll* (in Behalf of the Inhabitants) of *Red Clay Creek*, and *White Clay Creek*, quite to the Falls thereof, as far as the Precincts of *Maryland*, the Land called *Musser Creeple* therein included.
- And on 21 Feb. 1681. *Moll* assigns that Purchase to Mr. *Penn*.
- In order to understand what follows, please to note, that on first Jan. 1680. The Court at *Whorekills*, alias *Deal*, on Complaint from the Indians, that Persons took away their Lands without paying for the same, settled what Price should be given, and that the Indians, when they received the Purchase, should come and make their Deeds in Court.
1680. January 1. Sales from the Indians of 1000 Acres, and 700 Acres, between *Slaughter Branch* and *Cedar Creek*.
1683. February 13. Sale from the Indians at *Sussex Court*, of 1000 Acres, on the South Side of the Indian River.
1685. October 2. Sale from the Indians, to Mr. *Penn*, of all the Lands from *Duck Creek* to *Croester Creek*, all along by the West Side of *Delaware River*.
- December 10. The Indian Schachmaker of *Affawamat* fold, before *Sussex Court*, 1000 Acres, called the Indian Grove, on the South Side of Indian River.
1700. September 13. The Kings of the *Susquehannab* Indians fell to Mr. *Penn*, all the Lands on both Sides of the River *Susquehannab*, and confirm to him a former Sale of the said Land, heretofore made to Colonel *Dongan*, whose Sale of the same to Mr. *Penn* they acknowledge they have seen.

An Account of the Chief Governors of the Great Settlement called, under the Dutch, the New Netherlands, under the English, New York.

1630. July 15. A Director and Council, then established there, at Fort *Amsterdam*, in the Isle *Manhatans*, in *New Netherlands*, before whom the Indians Confirmation of their Sale before made of Cape *Hinloop* was confirmed.
1638. May 6. *William Kieft*, Director General there.
1647. Sept. 20. *Peter Stuyvesant*, General there.
- Who afterwards surrendered it to the English.
1663. Mar. 12. The Duke of *York* made Proprietor, and Chief Governor over *New York* and Appurtenances.
1664. April 2. He appoints Colonel *Richard Nichols* his (first) Deputy Governor.
1668. Mar. 25. Colonel *Francis Lovelace* now appears to be (the second) Deputy Governor.
- The Dutch re-entered.
1673. Aug. 12. The Dutch appoint General *Anthony Colve* Governor General of *New Netherland* and its Appurtenances and Dependencies.
- The Dutch again ceded it.
1674. June 29. The Duke of *York* was, again, made Proprietor and Chief Governor over *New York* and Appurtenances.
- July 1. He appointed Major *Edmund Andros* to be his Lieutenant-Governor of the same.
- To whom on 31 October the Dutch surrendered up the same.
1680. Novemb. 15. Governor *Andros* writes to the several Courts that he was going for *England*, but should leave Captain *Brockhols* his Lieutenant.
1681. Mar. 30. *Anthony Brockhols* appears to be the Commander there.
- And on 27 August the Duke ordered him not to change the Magistrates.
1684. The Duke of *York* became King,
- Since which time, the Governors of *New York* have been all appointed by the Crown.
- But Note that, in 1682, the Lower Counties, and Powers of Government there, were granted away by the Duke of *York*, unto Mr. *Penn*, who has held the same ever since, separately.

An Account who has had the Command or Military Authority, from time to time, in the Small Settlement, or Delaware, or Lower Counties, generally.

1642. May 15. *Jan Jansen van Ilpendam* appointed Factor of the Dutch West-India Company in the South River.
1647. Sept. 20. *Andries Huddie* appointed Factor for the said Dutch West-India Company at Fort *Nassaw*, in the South River.
1655. *John Paul Jacques* appointed Vice-Director and Chief of the South River, with very full Powers for Government, Administration of Justice, &c.
1657. April 12. A Conveyance, made by the Director and Council of the New Netherlands, unto *Jacob Alricks*, as Director and Commissary under the City of *Amsterdam*, over their Colony in the South River and Fortres *Cafimir*, but then called *New Amstel*, with all the Lands bought of the Indians according to a Sale of 19 July 1651.
1658. Octob. 28. *William Beckman* appointed Factor, Vice-Director and Governor over the South River.
1664. July 3. *Alexander Hynioffa* Governor of *New Amstel* for the City of *Amsterdam*.
- So far under the Dutch.
1664. Sept. 3. The English Commissioners Power to Sir *Robert Carr* to reduce *Delaware*.
- Octob. 1. The Articles of Surrender thereof, by the Dutch and Swedes to him.
24. The Commissioners appointed Colonel *Nicols* to go to *Delaware Bay*, and take Care for the Government of the Place.
1668. April 21. Captain *Carr* was appointed Commission Officer at *Delaware*, by Colonel *Lovelace*.

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- Dutch Re-entry.**
 1673. Sept. 19. The Dutch Governor General appoints *Peter Alricks* Commander of *South River*, from *Cape Hinlopen* to the Head of the River.
Dutch Cession again by Treaty.
 1674. Nov. 4. Colonel *Andros* appoints Captain *Cantwell* and Mr. *Tam* to take command of the Fort, &c. at *Newcastle*, or any Part of *Delaware River*.
 6. A Commission in Form granted to them for that Purpose.
 1676. Sept. 23. Colonel *Andros* appoints Captain *John Collier* Commander in *Delaware River and Bay*.
 1677. Aug. 13. Colonel *Andros* appoints Captain *Christopher Billop* to be Commander in *Delaware River and Bay*.
 1682. Aug. 24. *William Penn* Esq; became Grantee, by the Duke of *York's* Feoffments, of the Soil and Government of the 3 Lower Counties.
 1691. Oct. 25. King *William* returned the Government (not only of *Pennsylvania*, but also) of the Territories to *Pennsylvania*, and granted the same to Colonel *Fletcher*, then Governor of *New York*.
 1693. Aug. 20. But, again, in 22 Months, restored all the said Government to Mr. *Penn*, by Patent, under the Great Seal.
 1697. Mar. 17. *William Markham* was Deputy Governor under Mr. *Penn*.
 1698. May. 27. D^o.
 1702. Jan. 21. *Andrew Hamilton* was Deputy-Governor under Mr. *Penn*.
 1703. July 30. *John Evans*, Deputy Governor under Mr. *Penn*.
 1708. July 18. *Charles Gookin*, Deputy Governor under Mr. *Penn*.
 1716. Dec. 17. *William Keith*, Deputy Governor under Mr. *Penn*.
 1725. Jan. 7. } *Patrick Gordon*, Deputy Governor, by the Heir and Executrix of Mr. *Penn* deceased.
 1726. Apr. 18. } D^o re-appointed by the now Plaintiffs; the Heir at Law, and Executrix of their Father, who had before appointed him, being both dead, and the present Heir at Law
 1732. Jan. 26. } having released his Right to them.
 1733. August 2. }
 1737. Mar. 28. } The now Plaintiffs (after the strongest Opposition from Lord *Baltimore*) appointed Colonel *Thomas* their present Deputy Governor.
 February 7. }

Some Sort of **Subordinate Command** given, over a **Particular Part** of the Lower Counties.

1669. Feb. 28. Colonel *Andros* appoints a Scout and Commissaries, to keep good Order at the *Whorekills*.
 1674. Jan. 9. Colonel *Andros* orders Captain *Cantwell*, the Commander at *Newcastle* and *Delaware*, to appoint a *Lieutenant* and *Serjeants* to command at the *Whorekills*; the Number there being too small, at that time, for a Company.
 1676. Octob. 26. But, in less than two Years after, Colonel *Andros* appointed a *Captain*, a *Lieutenant*, and an *Ensign* of the Company at the *Whorekills*.

The **Times** of first Erecting **Civil Jurisdictions**, in the **Several Parts** of the **Three Lower Counties**, and the **Names** and **Limits**, given to those Jurisdictions.

1655. The Dutch Governor and Council at *New Netherlands* gave a special Power to *John Paul Jacques* to be Vice-Director and Chief of the *South River*, and to administer Right and Civil Justice, as well as Military.
 1658. October 28. The like Commission to *William Beckman*, for the whole *South River*, in like Terms.
 1668. April 21. Governor *Lovelace* of *New York's* Orders that the Civil Government at *Delaware* be continued, and the Governor and Council (there at *Delaware*) are to determine Complaints which shall be made against the Civil Magistrates. Those Counsellors to take an Oath to the Duke. The Laws, establish'd by the Duke, to be frequently communicated to the Counsellors and others. In Matters of Importance you must appeal to the Governor and Council of *New York*.
 1669. January 25. The Governor and Council at *New York*, upon a Desire from the *Whorekill*, Order that there be an Officer appointed among them to keep the Peace, and that a Commission be sent for that purpose.
 February 26. The Governor writes that he sends such a Commission.
 28. The Copy of that Commission as recorded at *New York*, appointing Scout and Commissaries, to try all Matters, under 10 l. among themselves, but, above that, or for Crimes, they are to apply to *New York*.
 1672. May 6. The Governor writes, from *New York*, that the Time is out, and orders the Inhabitants, at the *Whorekill*, to make new Election of Scout and Commissaries, and send them to him to be confirmed.
 August 1. On Return of a double Number, the Governor chuses such as he thought fit for one Year, when they were to make a new Return.
 1673. April 14. A Commission from *New York* to some Persons to settle the Government and Officers at the *Whorekills* as formerly.
 1672. May 17. The Governor and Council of *New York* order that *Newcastle* shall be a Corporation and Bailiwick, and have a Bailiff and 6 Assistants, and the Governor and Council settle the whole Frame of the Constitution of that Corporation.
 August 2. The Governor at *New York* appoints the Bailiff for *Newcastle*.
 1674. November 4. Governor *Andros* grants a Commission to the Old Commissaries at *Newcastle*, who were in Office when the Dutch came in, in July 1673, for the said Town of *Newcastle* and Dependencies.
 And five more to be Justices at *Newcastle*.
 And at *Newcastle*. And those at *Whorekill* in the Bay.
 1675. May 15. Governor *Andros's* Orders about surveying Lands, and recording them in the Books of the several Jurisdictions, were directed, To the Three several Courts of *Delaware River* or Bay.
 And to 6 more to be Justices at *Newcastle* and Dependencies.
 1676. Sept. 23. Governor *Andros's* Commissions to 6 Persons to be Justices in the Jurisdiction of *Delaware River* and Dependencies.
 Sept. 25. His Instructions to the Justices, declare that there shall be three Courts in the several Parts of the River, viz.
 Above at *Uplands*. And in *Newcastle*. And below at the *Whorekills*.
 1676. October 26. Governor *Andros's* Commission to 5 Persons to be Justices at the *Whorekills* and Dependencies.
 1677. Nov. 10. Governor *Andros's* Commission to 7 Persons to be Justices at the *Whorekill* and Dependencies.
 1678. October 8. D^o to 7 Persons at the *Whorekill* and Dependencies in *Delaware Bay*, for this Year.
 1677. September 5. The Court at *Newcastle* appointed a Constable, and fixt his Limits or Bounds, to be from the South-side of *St. George's Creek* to *Boonies-Hook*.
 6. Governor *Andros's* Commission to 7 Justices for *Newcastle* and Dependencies.
 1678. October 14. Governor *Andros's* Commission to 7 Persons as Justices of *Newcastle*.

1680. May 28. Governor Andros's four Commissions to 5 Persons to be Justices in the Jurisdiction of Upland Court and Dependencies.

5. More in the Jurisdiction of Newcastle and Dependencies.

Now we branch out into four Courts.

4. More in the County of St. Jones's in Delaware Bay and Dependencies, to begin from the South-side of Duck Creek, and to extend to the North-side of Cedar Creek.

5. More to be Justices at the Whorekill and Dependencies, that Court to begin at the South-side of Cedar Creek, and so to go downwards.

1680. December 15. In pursuance of the Governor's Order, the Court order this Town and County to be henceforth called Deal.

1682. November 7. Mr. Penn's Commission to 5 Persons to be Justices of the Peace and Court for St. Jones's.

1682. November 7. Mr. Penn's Commission to 5 Persons for Justices of the Court for the County of Whorekill alias New Deal.

1682. December 25. Appoints 7 Persons Justices of the Jurisdiction of St. Jones's, To be henceforth called Kent. From the South-side of the Main Branch of Duck Creek Northwards, and Southward to the North-side of the Main Branch of Mispillion Creek, called the Three Runs.

Also 7 Persons to be Justices of the Jurisdiction of the Whorekills,

To be hence called Sussex. The Extent whereof shall be from the Main Branch of Mispillion Creek, called the Three Runs, Northwards, and Southwards to Assawament Inlet, reputed and accounted Cape Henlopen, which I will, from henceforward, have called by the Name of Cape James.

Note. Upland was made into Chester County, a County, merely within the Province of Pennsylvania itself.

Newcastle County, continues Newcastle County to this Day.

Kent County, continues Kent County to this Day.

Sussex County, continues Sussex County to this Day.

The Attorney General ought not to be a Party.

8 August 1734.

My Lord Baltimore petitioned the King in Council, by a further Charter or Letters Patent to confirm to him the whole of such Part of the Peninsula as was contained within the Limits of his former Charter, notwithstanding the Words *hactenus inculta* in the Recital of the said former Charter contained.

This Petition (my Lord confesses in his present Answer) was calculated in order to get a Grant of the Lower Counties to himself.

19 December 1734.

And upon that Petition, my Lord obtained an (*ex parte*) Report from the Board of Trade.

Mr. Richard Penn, the youngest Brother, in behalf of himself, and his two elder Brothers then in Pennsylvania, presented another Petition to the King in Council, setting forth the Swedes and Dutch Possession, the Conquest from, and Cession by, the Dutch, the Grants to the Duke of York, his Feoffments to Mr. Penn, Mr. Penn's long Possession, and great Improvements; the several Contests and Orders between the Parties, the Agreement which had been entered into above two Years before, and the shameful Chicane of my Lord's Commissioners to prevent the carrying the same into Execution, and, in short, touched upon every part of the whole Case. And pray'd that he and his Brothers might not, upon the Lord Baltimore's Petition, be drawn (especially at so great a Surprise, and in such an uncommon Case) to set forth their Right to their ancient Possession; and that his Majesty would not be pleased, at the Lord Baltimore's Request, who had so lately convey'd those Lands to the Petitioners, to strip the Petitioners, who had not hitherto received any Benefit from the said Grant, to give the Fruit of their great Labour, Hazard and Expence to the Lord Baltimore, who had already so very beneficial a Grant; and that his Majesty would not grant the Prayer of Lord Baltimore's Petition, but dismiss the same, and confirm their Possession and Title, agreeable to the Limits in the Deeds of May 1732, between the Lord Baltimore and them.

10 & 16 May 1735.

The Report, and the Order of Council thereupon, (which was made upon both those Petitions, and upon hearing Council on both sides) was this,—That it appearing that such an Agreement had been entered into, on 10th May 1732, between Lord Baltimore, and the now Plaintiffs, for adjusting the Boundaries of the Lands granted to them by their respective Charters, which Articles had not been carry'd into Execution within the Time thereby limited, but, notwithstanding such Lapse of Time, the Validity of the said Articles being insisted on by, and on behalf of the now Plaintiffs, the Lords of the Committee do agree, humbly to report to your Majesty, as their Opinion, that the Consideration of the said Report, and Petitions, should be adjourned until the end of Michaelmas Term next, in order to give an Opportunity to the said John, Thomas and Richard Penn to proceed, in a Court of Equity, to obtain Relief upon the said Articles of Agreement so insisted upon by them as they shall be advised, and that, after the Expiration of the said Time, either Party should be at Liberty to apply to the Committee of Council for Plantation Affairs, as the Nature of the Case may require.—Which Report was confirmed by the King, and ordered accordingly.

21 June 1735.

We immediately brought our Bill, in Pursuance of this Order, and we have most precisely stated this Order, in our Bill, and we do by our Bill insist (just as we did before the Committee) that, notwithstanding the Lapse of Time, the Agreement does still subsist, and is valid, and in full Force.

And the only Relief we pray is merely against Lord Baltimore, and upon the Foot of that Agreement, and under the same, and to have the same carried into Execution, and to have Costs for the Non-Execution.

It's very true that, to entitle us to the Aid of this Court to enforce this Agreement, we have shewn that we have given the Defendant a Consideration.—And that is a Matter which cannot be shewn without entering, incidentally, into the original Rights of the two Parties, both claiming under several and respective Grants from the Crown; but this is done merely to shew that we have given, either what we had a clear and absolute Right, or at least what we had a probable Right to, unto my Lord Baltimore, as a Consideration, thereby to shew that our Agreement is such an One as a Court of Equity ought to assist, and to enforce the Execution of.

But, not with a View to gain any Determination as upon the meer original Right, itself; the Defendant (who in the Close of his Answer submits whether the Attorney-General should not be a Party) has, over and over again, in divers Parts of his own Answer, shewn that he himself understands our Bill in this very light, as merely seeking a specific Performance of the Agreement.

For, fol. 12. He apprehends that all that part of our Bill, touching who was the first Discoverer of the Peninsula, and touching Captain Smith's Book and Map, are wholly immaterial, and no way relative to any of the Matters in Question in this Cause.

Folio 20. Is advised its wholly immaterial, as to any Question that can arise between him and the Plaintiffs, whether the said Tract of Land was, or was not, inhabited by Christians, antecedent to the Grant to his Ancestor.

Folio 124. (After the Defendant has gone through the Matter of all the Possession of the Lower Counties, by the Duke of York, and the Conquests, and Treaties, and the Grants to the Duke of York, and his Feoffments to Mr. Penn, and Mr. Penn's Entry and Possession, the Defendant says expressly, He apprehends the original Right to the said three lower Counties cannot be drawn into Question in this Suit, and, therefore, the Defendant apprehends, and is advised all these Parts of the Bill, relating to the Grants from the Crown, and the Duke of York, might have been very well omitted out of the Plaintiffs Bill.

Folio 163. He insists the Plaintiffs could have no Right to the three Lower Counties, by Virtue of any the Purchases from the Indians.

And (fol. 167.) that it's not any way material, to the matters in Question between him and the Plaintiffs, whether the Indian Purchases contained the Whole, or three Fourths, or any other particular Part, of the Lower Counties.

Folio 361. He hopes the Agreement shall not be carried into Execution.

Folio 413. He himself sets forth the said Order of Council of 16 May 1735.

Folio 452. He hopes (for many pretended Reasons) that the Agreement shall not be carried into Question.

Now the Question is, whether we can make out a Case, to intitle us to carry this Agreement into Execution? And what is the Consequence one way, or other? If we do obtain such a Decree against my Lord, then, we shall be at Liberty to resort back to the Committee of Council, in Virtue of the Liberty referred to us, to supplicate his Majesty's Grace and Favour upon our Petition, to confirm our Possession and Title; and which Matter will then be in the Breast of his Majesty, and his Ministers, how far the same may be proper to be granted.

On the other hand, if we can't make out such a Case as to intitle us to a Decree against my Lord, that he shall specifically confirm his own Agreement, then, he will be at Liberty to make use of the Reservation contained in the Order, to apply to the King on his Part, upon his Petition for a Grant of these Lower Counties to himself, if his Majesty shall think fit to grant it, but which, in that Case also, will lay entirely in his Majesty's Breast.

And this, without any Determination of the original Right and Title, even as between the two contending Parties.

Much less, without determining it so as to offer to affect the Right of the Crown.

If this Bill were singly on the Foot of the Party's original Right, yet it's humbly submitted whether the Attorney-General need be a Party, even in that Case, for two Persons claiming different Rights, under different Grants from the Crown, to the self-same Tract of Land, may, it's humbly submitted, dispute each other's Right, as between them two, without any Necessity of making the Crown a Party to such a Suit, either at Law, or in Equity.

If Mr. Penns had even been ill enough advised to have brought a Bill in Equity, to have compelled the Crown to make further Assurance, in such a Case, the Attorney-General must necessarily have been made a Defendant, but it's a great doubt with Mr. Penns, whether they could have had a Decree, for Lands which lay in America.

Another Matter may be proper for Consideration, whether, as these Lands lie in America, this Court, upon the original Right, has any Jurisdiction, or could make any Decree against the Attorney-General, if he was a Party; and, if they cannot make a Decree against him, then, it would have been very vain to have made him a Party. I know that in *Richardson* and *Hamilton*, the Court made a Decree relating to Lands in Pennsylvania, and set aside a Sale made to the Defendant, under an Act of Assembly there; and decreed the Possession to the Plaintiffs; but that was in a Cause, where all the Parties were here in England, and where the Defendant was taken up on a *Ne exeat*, and submitted to this Jurisdiction; for, tho' he pleaded his Title, and that the Lands were sold to him under a Pennsylvania Act of Assembly, which by the Charter for Pennsylvania, was to be a good and valid Act, unless repealed by a Privy Seal, (which it never had been, only by an Order in Council, under the Seal of the Privy Council) yet, he never pleaded to the Jurisdiction; and my Lord Chancellor King supposed there was Fraud in obtaining the Act of Assembly, and it also appeared, at length, by examining the Clerk of the Council, that many Pennsylvania Acts had been repealed, since the Date of the Charter, and that all these Repeals had been made by Orders in Council only, without any Privy Seal.

But, tho' the Court might possibly not have a Jurisdiction upon the original Right, as to the Lands, yet, I hope there is no question of their Jurisdiction over the Persons of the present Parties to our Suit, who all live here, so as to decree them to perform their Agreement.

And, on this head, it may not be improper to mention that, in 1723 and 1724, when the great Opinions were taken as to the Extent of Lord Baltimore's Charter, (which you have at Folio 75, of your printed Brief) Those three Council were also askt, and gave their Opinions upon, a second Question, relating to the proper Court for determining the Controversy, as follows, *viz.*

Question 2.

Whether any of our Courts of Law, or Equity, can take Cognizance of this matter, or whether it can only be decided by the King in Council?

I don't apprehend this Dispute is proper to be settled in any Court, but by the King and Council.

I am of Opinion, that none of our Courts, either of Law or Equity, can take Cognizance of this Matter, but it's proper to be brought before the King in Council, where,

C. Weary.
J. Willes.

only, it can be determined. I conceive the Privy Council can only take Cognizance of Causes concerning the Plantations by way of Appeal, and that they have no original Jurisdiction, and this, being a Controversy between two Lords Proprietors, about the Boundaries of different Provinces, I don't see how it can be brought thither by Appeal.—Sometimes, Complaints have been made to the King in Council, where one Proprietary Government has encroached upon another, which have been referred to the Board of Trade and Plantations, and, upon their Report, Measures have been taken to adjust and settle it; and, that might be done, in this Case.—As to proceeding in the Courts of Law or Equity here.—The Courts of Law cannot hold Plea of this Matter.—But if some Point of Equity were in the Case, (which does not appear to me) the Court of Chancery might take Notice of it, and compel the Parties, being Resident within the Reach of their Process, to perform the Decree of that Court.

P. York.

You will please to consider whether there is not now, since the Time the above Opinions were given in 1724, a Point of Equity in the Case, upon the Agreement entered into between the Parties for valuable Considerations in 1732?

Now we lunch on the four Corners.

1. The first of these is the fact that the Government of the United States has not yet decided whether or not it will support the United Nations in its efforts to bring about a peaceful settlement of the Korean problem. This is a matter of great importance, and it is one which the United States should not leave to the discretion of the United Nations alone.

- As to the first Branch. By our Bill (fol. 356.) we charge that the Articles *do now subsist in full Force and Vertue*, and (fol. 442.) we demand a Discovery whether the Defendant admits that the Articles *do now exist and subsist in full Force and Vertue*, or whether he insists that the same is absolutely void; and in case he insists that the same is void, that, then, he may set forth, minutely, exactly and particularly, why, and for what Reasons, he insists the same is void, and whether it is not as easy, and as practicable, in a proper Season of the Year, *now*, to run, mark, and lay out the Bound Lines agreed upon by the Articles, as it was between *October 1732*, and *Christmas 1733*; or what new Difficulties have, since the last mentioned time, arisen, to make that Work more difficult, or less practicable, now, than at that time; and how long would be necessary for Commissioners, (to proceed fairly) to run out all the Lines and Bounds pursuant to the Agreement, in case no Difference or pretended Difference, in Judgment arose between them? And we pray (fol. 446.) That the Agreement may be decreed and declared to exist and subsist, and to be in full Force and Vertue, and may be decreed to be forthwith specifically performed, and to be carried into full Force and Execution, in all Points and Respects whatever. — In Answer hereto, the Defendant says (fol. 363.) Believes the Commissioners, in case no such Difference in Judgment had arose between them, might, within 4 Weeks, at a proper Season of the Year, have mark and run out the Circle and Lines mentioned in the Agreement. — Again (fol. 428.) He believes it is *as easy*, and *practicable*, in a proper Season of the Year, *now*, to run, mark, and lay out the Bound Lines agreed upon by the Articles, as it was between *October 1732*, and *Christmas 1733*, if the Agreement was still subsisting and in Force; but which he insists is and advised it is not; for the Reasons before and after mentioned. (Namely, the several Instances of Deceit pretended to be put upon him.) Again, at (fol. 445.) He does not admit that the Articles *do now exist or subsist in full Force and Vertue*; but, on the contrary, insists that the same are now absolutely void, and the Reason that he insists the same are void are as before mentioned, and from the several pretended Instances of Deceit put upon him.

So that the Defendant himself does not insinuate that they are *naturally* void, but void for Fraud, Deceit, and Imposition, in gaining the same from him in his great Ignorance. — Therefore, we are to examine, Step by Step, if there is the least Colour or Pretext for the several Instances of Deceit he mentions.

As to the second Branch, 'There was *one single* Cafe provided for, in the Articles themselves, which might indeed (had it ever happened in time, which it did not) have made the Articles utterly void; and that is the Cafe mentioned in the Proviso at the End of the 9th Clause of the Agreement (and is in fol. 68 of the printed Brie.) and, by that, if the Commissioners on either side, had not from time to time (during that Agreement) according to the Adjournments and Appointments made, attended to proceed in marking and running out the Lines, *for want whereof the same could not be done within the time before limited*. Then, indeed, and in *such* case the Agreement was to be void, and the Party whose Commissioners made *such* Default, was to forfeit and pay, to the other Party whose Commissioners should attend, 5000 l.

That Cafe cannot *heretofore* happen, for the whole time limited by those Articles is expired; But, has it *heretofore* happened? No. For the Appointment on 3d February 1732, was for *Eleven*; before half an Hour after *Eleven Ogle*, glad of an *advantage* as he called it, broke up the Meeting.

But, by the Defendant's own Confent, and own Appointment too, the Commiffioners afterwards met again at Joppa, and many other Places, vaft numbers of times, at 18 or 19 different Days, at a diftance of time from each other, which abundantly purged that half Hour.

But if they had never met again, was that *such* a Default in meeting by reason whereof the Lines could not be run *within the time*? No. For *every one* of our Commissioners; nay, *every one* of the Defendant's *own Commissioners* that were examined, expressly swear that an Hour or two's Non-Attendance on 3d February was not any *such* Hindrance as prevented the Lines from being run within the time limited, but that the Cause of the Lines Not being run was *the Difference in Judgment between the Commissioners*.

And, sure I am, that there is no Provifo for making the Agreement void if the Commissioners on either Side should differ, or pretend to differ, in Judgment.

The Defendant says his Bounds extend to the 40th Degree compleat, and therefore, all Lands, within that, are his own already, and the Plaintiffs pretending to grant to him those Lands, is granting what they have no Title to.

Where then is this 40th Degree?

We interrogated him by our Bill, *fol.* 393. but he has neither answered to it, nor proved it.

Four, at least, of his own Witnesses, tell us of *Observations* they have taken, *Lines* they have run, *Surveys* that they have had, and *Plats* that they have made.

Yet, no Map proved or produced, at all, on the Defendant's Part, of *any* thing whatever.

The Duke of York posselt from 1663, to 1682.

We first took Possession 28 October 1682.

That, by vertue of Feoffment, Livery, and Seisin,

From that Hour, to this, Mr. Penn's Family have been in the constant Possession, without one Moment's Interruption, for above threescore Years.

Have improved also, and made the finest Colony in America,

Without One Shilling Expence to the Crown, or Publick, in any shape.

And this in *America*, where Possession, and *some* Improvement, was *always* held good for a Title.

A fortiori, such a long Possession, so great an Improvement.

His Map was most precisely true, in the very Place where he pretends 'twas false.

The Cavils are, that his own Map did not lay down some Rivers in *Chelapeak Bay*, on the *West Side* of the *mainland*, and at the *Head* of *Chelapeak*, quite out of the Way, where there was no fort of *Dispute*.

But his Map, (for a small one) is actually the best that ever was seen :

And if People were now to take an actual Survey, at a monstrous Expence, they could not possibly make one more exact, if it was to be in that *small Compass*.

General Description of the Map, and the Peninsula, and the Isthmus, and the Degree, and the Beginning and the End of the Bay of Delaware, and about Cape Henlopen. And General State of the Case, and Account of the written Evidence, fol. 1.

An Account of all the *Maps*, fol. 6.

The several *Lines* claimed by Lord *Baltimore's* Ancestors and himself, and now grented to him, fol. 6.

As to my Lord's great *Ignorance*, fol. 6.

As to Old *Cape Henlopen*, fol. 7.

As to the *Circle*, fol. 8.

Extracts merely as to the *Plaintiff's Title to Pennsylvania*, and the Lower Counties, fol. 9.

An Account of all the *Indian Purchases*, fol. 10.

of the *Chief Governors* over the *Great Settlement*, fol. 10.

of the *Military Command* in the *small Settlement*, fol. 10.

of the *Subordinate Command at the Whorekills*, fol. 11.

of the successive Times of erecting *Civil Jurisdictions* in the Lower Counties, respectively, *fol.* 11.

The *Attorney-General* ought not to be a *Party*, fol. 12.

The Agreement is *not* void, fol. 13.

Addenda, fol. 13.

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